

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, January 13, 2022
Place: Department A – Courtroom #11
Fresno, California

Beginning the week of June 28, 2021, and in accordance with District Court General Order No. 631, the court resumed in-person courtroom proceedings in Fresno. Parties to a case may still appear by telephone, provided they comply with the court's telephonic appearance procedures, which can be found on the court's website.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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, and all parties will need to appear at the hearing unless otherwise ordered. 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. 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 14 days of the final hearing on the matter.

THE COURT ENDEAVORS TO PUBLISH ITS RULINGS AS SOON AS POSSIBLE. HOWEVER, CALENDAR PREPARATION IS ONGOING AND THESE RULINGS MAY BE REVISED OR UPDATED AT ANY TIME PRIOR TO 4:00 P.M. THE DAY BEFORE THE SCHEDULED HEARINGS. PLEASE CHECK AT THAT TIME FOR POSSIBLE UPDATES.

9:30 AM

1. [19-10438](#)-A-13 **IN RE: JOSE/JENNIFER RODRIGUEZ**
[NES-3](#)

CONTINUED MOTION TO MODIFY PLAN
10-29-2021 [[90](#)]

JENNIFER RODRIGUEZ/MV
NEIL SCHWARTZ/ATTY. FOR DBT.
WITHDRAWN

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on December 30, 2021. Doc. #99.

2. [21-11640](#)-A-13 **IN RE: TRICIA ACEVES**
[SLL-2](#)

OBJECTION TO CLAIM OF ROBERT ACEVES, CLAIM NUMBER 9-3
11-29-2021 [[31](#)]

TRICIA ACEVES/MV
STEPHEN LABIAK/ATTY. FOR DBT.
CONT'D TO 1/27/22, ORDER, DOC. #43

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Continued to January 27, 2022, at 9:30 a.m.

NO ORDER REQUIRED.

On December 27, 2021, the court issued an order continuing the hearing on the objection to claim to January 27, 2022, at 9:30 a.m. Doc. #43.

3. [18-11841](#)-A-13 **IN RE: SHINOOK/JUANITA MATHEWS**
[DRJ-2](#)

MOTION FOR COMPENSATION FOR DAVID R. JENKINS, DEBTORS ATTORNEY(S)
12-3-2021 [[31](#)]

DAVID JENKINS/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. 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 Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

David R. Jenkins ("Movant"), counsel for Shinook L. Mathews and Juanita Mathews (together, "Debtors"), the debtors in this chapter 13 case, requests final allowance of compensation and reimbursement for expenses in the amount of \$2,886.00 for services rendered from March 4, 2018 through November 24, 2021. Doc. #31. Debtors' confirmed plan provides for \$2,886.00 in attorney's fees to be paid through the plan. Plan, Doc. #5, 21. No prior fee applications have been submitted. Debtors consent to the amount requested in Movant's application. Ex. D, Doc. #33.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). The court may allow reasonable compensation to the chapter 13 debtor's attorney for representing interests of the debtor in connection with the bankruptcy case. 11 U.S.C. § 330(a)(4). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3). Here, Movant demonstrates services rendered relating to: (1) pre-petition consulting and fact gathering; (2) preparing schedules and chapter 13 plan; (3) communicating with Debtors and the chapter 13 trustee to achieve confirmation of chapter 13 plan; and (4) preparing the fee application. Exs. A, B & C, Doc. #33. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion.

This motion is GRANTED. The court allows on a final basis compensation and reimbursement for expenses in the amount of \$2,886.00 to be paid in a manner consistent with the terms of the confirmed plan.

4. [21-12147](#)-A-13 **IN RE: MELISSA JONES**
[TCS-1](#)

MOTION FOR COMPENSATION FOR TIMOTHY C. SPRINGER, DEBTORS ATTORNEY(S)
12-10-2021 [\[18\]](#)

TIMOTHY SPRINGER/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. 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 Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The Law Offices of Timothy C. Springer, Nancy D. Klepac, Esq. ("Movant"), counsel for Melissa Nicole Jones ("Debtor"), the debtor in this chapter 13 case, requests interim allowance of compensation in the amount of \$5,465.00 for services rendered from June 12, 2021 through November 30, 2021. Doc. #18. Debtor's confirmed plan provides for \$5,785.00 in attorney's fees to be paid through the plan. Plan, Doc. ##3, 13. No prior fee application has been submitted. Debtor consents to the amount requested in Movant's application. Doc. #18.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). The court may allow reasonable compensation to the chapter 13 debtor's attorney for representing interests of the debtor in connection with the bankruptcy case. 11 U.S.C. § 330(a)(4). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3). Here, Movant demonstrates services rendered relating to: (1) pre-petition consulting and fact gathering; (2) preparing and filing voluntary petition, schedules, and support documents; (3) attending the meeting of creditors and confirming the chapter 13 plan; and (4) preparing the fee application. Exs. A, B & C, Doc. #20. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion.

This motion is GRANTED. The court allows on an interim basis compensation in the amount of \$5,465.00 to be paid in a manner consistent with the terms of the confirmed plan.

5. [21-12061](#)-A-13 **IN RE: EUGENE TOLOMEI**
[WLG-1](#)

MOTION TO CONFIRM PLAN
11-17-2021 [\[30\]](#)

EUGENE TOLOMEI/MV
MICHAEL REID/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

6. [21-12562](#)-A-13 **IN RE: MARGARET GRAVELLE**
[EAT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY LAKEVIEW LOAN SERVICING, LLC
12-21-2021 [\[18\]](#)

LAKEVIEW LOAN SERVICING, LLC./MV
THOMAS MOORE/ATTY. FOR DBT.
CASSANDRA RICHEY/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party will submit a proposed order after the hearing.

This objection was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and sustain the objection. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

The debtors filed their chapter 13 plan ("Plan") on November 2, 2021. Doc. #3. Secured creditor Lakeview Loan Servicing LLC ("Creditor") objects to confirmation of the Plan on the grounds that: (1) the Plan does not provide for the curing of the \$33,444.20 default on Creditor's claim; and (2) the monthly Plan payments will be insufficient to fund the Plan once the arrears on Creditor's claim are fully provided for. Doc. #18.

Federal Rule of Bankruptcy Procedure 3001(f) provides that "[a] proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim." 11 U.S.C. § 502(a) states that a claim or interest, evidenced by a proof of claim filed under section 501, is deemed allowed unless a party in interest objects. Creditor filed its proof of claim on December 23, 2021. Claim 2.

Section 3.02 of the Plan provides that the proof of claim determines the amount and classification of a claim. Doc. #3. The Plan provides for Creditor in Class 1 but only lists \$12,000 owing in arrears. Plan § 3.07. Creditor also maintains that the post-petition monthly payment proposed in the Plan is not

sufficient to cover the actual monthly amount owed. The Plan fails to account for Creditor's claim, and it appears that the Plan will not fund once Creditor's claim is provided for. Claim 2; Doc. #3.

Accordingly, pending any opposition at hearing, the objection will be SUSTAINED.

7. [21-12272](#)-A-13 **IN RE: AMANDA MANUEL**
[JV-2](#)

MOTION TO CONFIRM PLAN
11-19-2021 [\[24\]](#)

AMANDA MANUEL/MV
JASON VOGELPOHL/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The court will issue an order after the hearing.

This motion to confirm the first modified chapter 13 plan was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). On December 30, 2021, the chapter 13 trustee ("Trustee") filed written opposition to the debtor's motion. Doc. #31. The failure of other creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered. This matter will proceed as scheduled.

Amanda Manuel ("Debtor") filed the first amended chapter 13 plan ("Plan") on November 19, 2021. Doc. #22. Trustee objects to confirmation of the Plan because Plan § 3.05 indicates that Debtor's attorney will be paid the "no-look" fee provided in LBR 2016-1(c), yet the amount to be paid exceeds the amount set forth in the plan. Doc. #31. Trustee's opposition indicates that this objection can be resolved by including certain language in the order confirming plan.

Trustee also objects to confirmation of the Plan because the Plan does not provide for all of Debtor's projected disposable income to be applied to unsecured creditors. Section 1325(b)(1)(B) provides that on objection by the trustee the court may not approve the plan unless the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period will be applied to make payments to unsecured creditors. 11 U.S.C. § 1325(b)(1)(B). Debtor is not an above-median income debtor, and Debtor's Schedules I and J show a monthly net income of \$174.88. Doc. #1. While the Plan proposes to pay \$173 for month 1, the proposed monthly payment is reduced to \$122 for months 2 through 36. Plan § 7, Doc. #22. The Plan fails to provide all projected disposable income as required by § 1325(b)(1)(B).

Trustee further contends that Debtor improperly lists expenses totaling \$1,755 for rent, renter's insurance, electricity, and internet, even though Debtor is

not renting an apartment and has not paid rent since October 2021. Doc. #31. Trustee further contends that the Plan has not been proposed in good faith. Doc. #31. Because the Plan cannot be confirmed by operation of § 1325(b)(1)(B), the court need not decide these additional questions, which would likely require additional fact gathering and an evidentiary hearing.

Accordingly, the motion will be DENIED.

8. [21-10679](#)-A-13 **IN RE: SYLVIA NICOLE**
[MHM-7](#)

OBJECTION TO HOMESTEAD EXEMPTION
12-14-2021 [[299](#)]

MICHAEL MEYER/MV
MICHAEL MEYER/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

9. [21-10679](#)-A-13 **IN RE: SYLVIA NICOLE**
[SSA-5](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
12-10-2021 [[292](#)]

T2M INVESTMENTS LLC/MV
STEVEN ALTMAN/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

10. [20-12881](#)-A-13 **IN RE: NANCY MORENO**
[TCS-1](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF TIMOTHY C. SPRINGER
DEBTORS ATTORNEY(S)
12-6-2021 [[22](#)]

TIMOTHY SPRINGER/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. 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 Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The Law Offices of Timothy C. Springer, Nancy D. Klepac, Esq. ("Movant"), counsel for Nancy Moreno ("Debtor"), the debtor in this chapter 13 case, requests interim allowance of compensation in the amount of \$9,095.00 for services rendered from April 13, 2020 through November 30, 2021. Doc. #22. The order confirming Debtor's plan provides that Debtor's attorney will seek approval of fees by fee application. Doc. #17. No prior fee application has been submitted. Debtor consents to the amount requested in Movant's application. Doc. #22.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). The court may allow reasonable compensation to the chapter 13 debtor's attorney for representing interests of the debtor in connection with the bankruptcy case. 11 U.S.C. § 330(a)(4). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3). Here, Movant demonstrates services rendered relating to: (1) pre-petition consulting and fact gathering; (2) preparing and filing voluntary petition, schedules, amended schedules and support documents; (3) attending the meeting of creditors and confirming the chapter 13 plan; and (4) preparing the fee application. Exs. A, B & C, Doc. #24. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion.

This motion is GRANTED. The court allows on an interim basis compensation in the amount of \$9,095.00 to be paid in a manner consistent with the terms of the confirmed plan.

11. [21-12384](#)-A-13 **IN RE: JOSEPH SMELTZER**
[APN-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY GLOBAL LENDING SERVICES LLC
11-23-2021 [\[39\]](#)

GLOBAL LENDING SERVICES LLC/MV
AUSTIN NAGEL/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

An order dismissing this case was entered on January 6, 2022. Doc. #62. The objection will be OVERRULED AS MOOT.

12. [21-12384](#)-A-13 **IN RE: JOSEPH SMELTZER**
[CLB-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY BANK OF AMERICA, N.A.
11-22-2021 [\[36\]](#)

BANK OF AMERICA, N.A./MV
CHAD BUTLER/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

An order dismissing this case was entered on January 6, 2022. Doc. #62. The objection will be OVERRULED AS MOOT.

13. [21-12384](#)-A-13 **IN RE: JOSEPH SMELTZER**
[MHM-2](#)

MOTION TO CONFIRM PLAN
12-3-2021 [\[44\]](#)

MICHAEL MEYER/MV
RESPONSIVE PLEADING

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

An order dismissing this case was entered on January 6, 2022. Doc. #62. The motion will be DENIED AS MOOT.

14. [21-12384](#)-A-13 **IN RE: JOSEPH SMELTZER**
[MMJ-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY CAPITAL ONE AUTO FINANCE
11-15-2021 [\[24\]](#)

CAPITAL ONE AUTO FINANCE/MV
MARJORIE JOHNSON/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

An order dismissing this case was entered on January 6, 2022. Doc. #62. The objection will be OVERRULED AS MOOT.

15. [21-11788](#)-A-13 **IN RE: JAVIER/DANIELLE DE OCHOA**
[MHM-1](#)

CONTINUED MOTION TO DISMISS CASE
11-19-2021 [[29](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Continued to February 10, 2022, at 9:30 a.m.

ORDER: The court will issue an order.

The trustee's motion to dismiss will be continued to February 10, 2022, at 9:30 a.m., to be heard with the debtors' motion to confirm plan.

16. [21-12819](#)-A-13 **IN RE: CLAUDIA CASTRO**
[TCS-1](#)

MOTION TO EXTEND AUTOMATIC STAY
12-30-2021 [[13](#)]

CLAUDIA CASTRO/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted if full declaration in support of the motion is filed by 3 p.m. on January 12, 2022.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The court will issue an order after the hearing.

This motion was filed and served on at least 14 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion so long as a full declaration in support of the motion is filed by 3 p.m. on January 12, 2022. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Debtor Claudia Patricia Castro ("Debtor") moves the court for an order extending the automatic stay pursuant to 11 U.S.C. § 362(c)(3)(B). In support of the motion, Debtor submitted an incomplete declaration. Doc. #15. Only the first page of the Debtor's supporting declaration was filed on the court's docket. It is unclear whether the full declaration was served with the motion. Based on the incomplete evidence filed with the court, the court cannot grant the relief requested. If Debtor wants the motion to proceed at the hearing set for January 13, 2022, by no later than 3 p.m. on Wednesday, January 12, 2022, Debtor shall file the full declaration in support of the relief requested.

Debtor had a chapter 13 case pending within the preceding one-year period that was dismissed, Case No. 20-11117 (Bankr. E.D. Cal.) (the "Prior Case"). The Prior Case was filed on March 19, 2020 and dismissed on November 17, 2020. Under 11 U.S.C. § 362(c)(3)(A), if a debtor had a bankruptcy case pending within the preceding one-year period that was dismissed, then the automatic stay with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the current case. Debtor filed this case on December 17, 2021. Petition, Doc. #1. The automatic stay will terminate in the present case on January 16, 2022.

Section 362(c)(3)(B) allows the court to extend the stay "to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed[.]" 11 U.S.C. § 362(c)(3)(B).

Section 362(c)(3)(C)(i) creates a presumption that the case was not filed in good faith if (1) the debtor filed more than one prior case in the preceding year; (2) the debtor failed to file or amend the petition or other documents without substantial excuse, provide adequate protection as ordered by the court, or perform the terms of a confirmed plan; or (3) the debtor has not had a substantial change in his or her financial or personal affairs since the dismissal, or there is no other reason to believe that the current case will result in a discharge or fully performed plan. 11 U.S.C. § 362(c)(3)(C)(i).

The presumption of bad faith may be rebutted by clear and convincing evidence. 11 U.S.C. § 362(c)(3)(C). Under the clear and convincing standard, the evidence presented by the movant must "place in the ultimate factfinder an abiding conviction that the truth of its factual contentions are 'highly probable.'" Factual contentions are highly probable if the evidence offered in support of them instantly tilt[s] the evidentiary scales in the affirmative when weighed against the evidence offered in opposition." Emmert v. Taggart (In re Taggart), 548 B.R. 275, 288 n.11 (B.A.P. 9th Cir. 2016) (citations omitted), vacated and remanded on other grounds by Taggart v. Lorenzen, 139 S. Ct. 1795 (2019).

In this case, the presumption of bad faith arises. Debtor failed to perform the terms of a confirmed plan in the Prior Case. A review of the court's docket in the Prior Case disclosed a chapter 13 plan was confirmed on July 19, 2021, the chapter 13 trustee ("Trustee") filed a Notice of Default and Intent to Dismiss Case (the "Notice") on October 5, 2021, and the court dismissed the Prior Case upon Trustee's declaration that Debtor failed to address the Notice in the time and manner prescribed by LBR 3015-1(g). See Prior Case, Doc. ##78, 82, 87. Debtor acknowledges that the Prior Case was dismissed for failure to pay plan payments timely. Decl. of Debtor, Doc. #15.

In support of this motion to extend the automatic stay, Debtor served a declaration. Doc. #15. However, only the first page of the declaration was filed with the court. From the portion of Debtor's declaration filed with the court, it appears that Debtor required emergency surgery that put Debtor out of work for three months and prevented Debtor from working normal hours. Doc. #15. Due to the loss of income, Debtor was unable to make plan payments and the Prior Case was dismissed. Doc. #15. Debtor's Schedules I and J filed in this case list monthly net income of \$3,007, all of which Debtor proposes to apply to plan payments. Schedules I & J, Doc. #10; Plan, Doc. #11.

The court is inclined to find that Debtor's unexpected medical treatment that occurred during the Prior Case preventing successful plan payments rebuts the

presumption of bad faith that arose from the failure to perform the terms of a confirmed plan in the Prior Case and that Debtor's petition commencing this case was filed in good faith. Moreover, the court recognizes that Debtor's recovery and ability to work again represent a substantial change in financial affairs since the dismissal of the Prior Case.

Accordingly, the court is inclined to GRANT the motion and extend the automatic stay for all purposes as to those parties that received notice of Debtor's motion (see Doc. #16), unless terminated by further order of the court.

1. [18-14920](#)-A-7 **IN RE: SOUTH LAKES DAIRY FARM, A CALIFORNIA**
[20-1034](#) [BBR-2](#) **GENERAL PARTNERSHIP**

MOTION FOR SUMMARY JUDGMENT
12-2-2021 [[62](#)]

SOUSA V. FRED AND AUDREY SCHAKEL AS TRUSTEES OF THE
KALEB JUDY/ATTY. FOR MV.
RESPONSIVE PLEADING

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Continued to January 27, 2022, at 11:00 a.m.

NO ORDER REQUIRED.

On December 28, 2021, the court issued an order continuing the hearing on the motion for summary judgment to January 27, 2022, at 11:00 a.m. Doc. #109.

2. [18-14546](#)-A-7 **IN RE: LANE ANDERSON**
[19-1024](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
2-15-2019 [[1](#)]

MURILLO V. ANDERSON ET AL
RICK MORIN/ATTY. FOR PL.
RESPONSIVE PLEADING

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED.

This adversary proceeding was dismissed on January 4, 2022. Doc. #97.

3. [19-12047](#)-A-7 **IN RE: ROBERT FLETCHER**
[19-1097](#)

CONTINUED PRE-TRIAL CONFERENCE RE: AMENDED COMPLAINT
9-30-2019 [\[8\]](#)

FLETCHER V. FLETCHER ET AL
DAVID JENKINS/ATTY. FOR PL.
RESPONSIVE PLEADING

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Continued to April 21, 2022, at 11:00 a.m.

ORDER: The court will issue an order.

Pursuant to the plaintiff's status report, Doc. #153, the pre-trial conference will be continued to April 21, 2022, at 11:00 a.m.

The parties shall file either joint or unilateral status report(s) not later than April 14, 2022.

4. [21-10679](#)-A-13 **IN RE: SYLVIA NICOLE**
[21-1015](#) [NS-12](#)

MOTION TO DISMISS DEFENDANT T2M INVESTMENTS, LLC'S CROSS-COMPLAINT
11-12-2021 [\[282\]](#)

NICOLE V. T2M INVESTMENTS, LLC
WITHDRAWN

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on January 7, 2022. Doc. #295.

5. [21-10679](#)-A-13 **IN RE: SYLVIA NICOLE**
[21-1023](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
5-26-2021 [\[1\]](#)

U.S. TRUSTEE V. NICOLE
JUSTIN VALENCIA/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

6. [21-10679](#)-A-13 **IN RE: SYLVIA NICOLE**
[22-1003](#) [VL-1](#)

MOTION FOR AN ORDER TO SCHEDULE AUTOPSY
1-11-2022 [[6](#)]

NICOLE V. PEEK FUNERAL HOME ET AL
SYLVIA NICOLE/ATTY. FOR MV.

NO RULING.

7. [21-10679](#)-A-13 **IN RE: SYLVIA NICOLE**
[22-1003](#) [VL-2](#)

MOTION FOR AN ORDER TO STAY FUNERAL PROCEEDING
1-11-2022 [[7](#)]

NICOLE V. PEEK FUNERAL HOME ET AL
SYLVIA NICOLE/ATTY. FOR MV.

NO RULING.