

UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable Jennifer E. Niemann  
Hearing Date: Thursday September 1, 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.**

1. [22-11116](#)-A-13     **IN RE: THEDFORD JONES**  
[SAH-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY DENISE BALESTIER  
8-15-2022    [[22](#)]

DENISE BALESTIER/MV  
MICHAEL BERGER/ATTY. FOR DBT.  
SUSAN HEMB/ATTY. FOR MV.

TENTATIVE RULING:       This matter will proceed as scheduled.

DISPOSITION:            Overruled.

ORDER:                    The minutes of the hearing will be the court's findings  
                              and conclusions. The court will issue an 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. While opposition can be raised at the hearing, the court intends to overrule 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 debtor filed his chapter 13 plan ("Plan") on July 14, 2022. Doc. #11. Denise Balestier ("Creditor") objects to confirmation of the Plan on the grounds that the Plan does not provide for Creditor's priority claim for (i) an equalization payment in the amount of \$389,095.41, including compounding interest, or (ii) spousal support in the amount of \$56,406.30, including compounding interest. Doc. #22.

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 her proof of claim for unpaid equalization payment on August 4, 2022, and her proof of claim for unpaid spousal support on August 8, 2022. Claims 5 and 6. On August 30, 2022, the debtor filed an objection to the priority nature of Creditor's proof of claim for the unpaid equalization payment. Doc. #25. The debtor asserts that Creditor's claim for the unpaid equalization payment should be treated as a general unsecured claim only. Id.

Section 3.12 of the Plan provides for priority claims in the amount of \$164,026.00. Id. Because the debtor has filed an objection to the priority designation of Claim 5 in the amount of \$389,095.41 and the Plan adequately provides for Creditor's priority claim for spousal support in the amount of \$56,406.30, Creditor's objection to confirmation of the Plan should be overruled. Claim 6; Doc. #11.

Accordingly, the objection will be OVERRULED.

2. [19-10020](#)-A-13     **IN RE: DANIEL DOWELL AND MELISSA ROCHA DOWELL**  
[MHM-1](#)

CONTINUED MOTION TO DISMISS CASE  
7-14-2022    [[26](#)]

MICHAEL MEYER/MV  
PETER BUNTING/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 was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The chapter 13 trustee's motion sought to dismiss the debtors' case pursuant to 11 U.S.C. § 1307(c)(1) and (c)(6) stemming from the debtors' failure to make all payments due under the plan. Prior to the original hearing on this motion, the court continued the hearing to September 1, 2022 at 9:30 a.m. to be heard with the debtors' motion to confirm plan. Civil Minutes, Doc. #42.

On July 28, 2022, the debtors filed and served a motion to confirm the debtors' first modified plan and set that motion for hearing on September 1, 2022. Doc. ##35-41. That motion has been granted by final ruling, matter #3 below.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth), 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). It appears that confirmation of the debtors' second modified plan satisfies all outstanding grounds for chapter 13 trustee's motion to dismiss, so there is no "cause" for dismissal under 11 U.S.C. § 1307(c)(1) or (c)(6).

Accordingly, unless withdrawn prior to the hearing, this motion will be DENIED.

3. [19-10020](#)-A-13     **IN RE: DANIEL DOWELL AND MELISSA ROCHA DOWELL**  
[PBB-2](#)

MOTION TO MODIFY PLAN  
7-28-2022    [[35](#)]

MELISSA ROCHA DOWELL/MV  
PETER BUNTING/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 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). 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 movants have done here.

This motion is GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

4. [22-11145](#)-A-13     **IN RE: GUSTAVO BARRON**  
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER  
8-15-2022    [[14](#)]

RABIN POURNAZARIAN/ATTY. FOR DBT.  
RESPONSIVE PLEADING

TENTATIVE RULING:     This matter will proceed as scheduled.

DISPOSITION:        Overruled.

ORDER:               The minutes of the hearing will be the court's findings and conclusions. The court will issue an 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. While opposition can be raised at the hearing, the debtor filed a written opposition on August 18, 2022. Doc. #24. Based on the debtor's written response and a review of the court's

docket, the court intends to overrule the objection unless the objection is withdrawn prior to or at the hearing.

Gustavo Barron ("Debtor") filed his Chapter 13 Plan on July 6, 2022 ("Plan"). Doc. #3. The chapter 13 trustee ("Trustee") objects to confirmation of the Plan because Debtor is married but filed his bankruptcy petition individually and has not included community debts in his schedules and those creditors did not receive notice of Debtor's bankruptcy case. Doc. #14.

On August 18, 2022, Debtor filed a response to Trustee's objection to confirmation stating that on August 15, 2022, Debtor filed an amended schedule E/F to add creditors of Debtor's non-filing spouse to Debtor's bankruptcy petition and, on August 16, 2022, those creditors were served with notice of Debtor's bankruptcy case. Doc. #24.

Based on the documents filed by Debtor on August 15, 2022 and August 16, 2022, it appears that all issues raised by Trustee in the objection to confirmation have been addressed and the objection to confirmation should be OVERRULED.

5. [19-13251](#)-A-13     **IN RE: OSCAR/MELISSA GARZA**  
[MHM-3](#)

MOTION TO DISMISS CASE  
8-4-2022    [[121](#)]

MICHAEL MEYER/MV  
WILLIAM OLCOTT/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 August 22, 2022. Doc. #127.

6. [19-13760](#)-A-13     **IN RE: MARIA CANALES**  
[MHM-1](#)

MOTION TO DISMISS CASE  
8-4-2022    [[21](#)]

MICHAEL MEYER/MV  
THOMAS GILLIS/ATTY. FOR DBT.

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

DISPOSITION:                    Granted.

ORDER:                            The court will issue an order.

Unless the chapter 13 trustee's motion is withdrawn before the hearing, the motion will be granted without oral argument for cause shown.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the debtor 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 Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Here, the chapter 13 trustee asks the court to dismiss this case under 11 U.S.C. § 1307(c)(6) for the debtor's failure to make all payments due under the plan. Doc. #21. Maria Canales ("Debtor"), the debtor in this chapter 13 case, did not oppose.

Debtor's Chapter 13 petition was filed on August 30, 2019. Doc. #1. Debtor's Chapter 13 plan proposed to pay \$200.00 for 36 months and was confirmed on November 7, 2019. Plan, Doc. #2; Order, Doc. #17. The final plan payment was due on August 25, 2022. Decl. of Mai Ko Vang, Doc. #23. No plan payments have been received for June and July 2022. Id. As of August 4, 2022, payments are delinquent in the amount of \$400.00. Id. The delinquency amount of \$400.00 plus the final plan payment of \$200.00, for a total of \$600.00, must be received by the chapter 13 trustee before the hearing date. Id.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for "cause". "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth), 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(6) for Debtor's failure to complete the terms of her confirmed plan.

A review of Debtor's Schedules A/B and D shows that Debtor's significant assets, vehicles and real property, are over encumbered, and Debtor claims exemptions in the remaining assets. Doc. #1. Because there is no equity to be realized for the benefit of the estate, dismissal, rather than conversion to chapter 7, is in the best interests of creditors and the estate.

Accordingly, the motion will be GRANTED. The case will be dismissed.

OBJECTION TO CLAIM OF WILMINGTON SAVINGS FUND SOCIETY, FSB, CLAIM NUMBER 1  
7-13-2022    [[32](#)]

CONSTANCE RYAN/MV  
TIMOTHY SPRINGER/ATTY. FOR DBT.  
RESPONSIVE PLEADING

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                    Overruled.

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

This objection was set for hearing on at least 44 days' notice pursuant to  
Local Rule of Practice ("LBR") 3007-1(b)(1). Wilmington Savings Fund Society,  
FSB, not in its individual capacity but solely as Owner Trustee of the Aspen  
Holdings Trust, a Delaware Statutory Trust ("Claimant") timely filed written  
opposition. Doc. #60. The debtors have not responded to Claimant's opposition.  
The matter will proceed as scheduled.

As an initial matter, the objection to claim was served on Claimant at  
P.O. Box 28720, the P.O. Box where payments are to be sent according to  
Claimant's proof of claim, and not to P.O. Box 27370, the P.O. Box where  
notices are to be sent according to Claimant's proof of claim. Claim 1;  
Doc. #40. The court will waive this service defect because Claimant timely  
filed written opposition to the objection.

Debtors Stevens and Constance Ryan (collectively, "Debtors"), the chapter 13  
debtors in this bankruptcy case, object to claim no. 1 (the "Claim") filed by  
Claimant on the grounds that the Claim inflates the principal, interest and  
fees owed to Claimant. Doc. #32. Debtors also assert that the account was  
charged off years ago and that the statute of limitations expired on the Claim.  
Id.

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 § 501, is  
deemed allowed unless a party in interest objects. The party objecting to a  
presumptively valid claim has the burden of presenting evidence to overcome the  
prima facie showing made by the proof of claim. In re Medina, 205 B.R. 216, 222  
(B.A.P. 9th Cir. 1996). The objecting party must provide "sufficient evidence  
and 'show facts tending to defeat the claim by probative force equal to that of  
the allegations of the proofs of claim themselves.'" Lundell v. Anchor Constr.  
Specialists, Inc., 223 F.3d 1035, 1039 (9th Cir. 2000) (quoting Wright v. Holm  
(In re Holm), 931 F.2d 620, 623 (9th Cir. 1991)). In addition, LBR 3007-1  
provides in relevant part: "Unless the basis for the objection appears on the  
face of the proof of claim, the objection shall be accompanied by evidence  
establishing its factual allegations and demonstrating that the proof of claim  
should be disallowed. A mere assertion that the proof of claim is not valid or  
that the debt is not owed is not sufficient to overcome the presumptive  
validity of the proof of claim." LBR 3007-1(a).

Here, the grounds for objecting to the Claim are that the Claim inflates the principal, interest and fees owed to Claimant, the account was charged off years ago, and the statute of limitations expired on the Claim. Doc. #32. These grounds do not appear on the face of the Claim, and no declarations were filed in support of the factual allegations that form the basis for Debtors' objection. The court finds that Debtors have not met their burden of presenting evidence to overcome the prima facie evidence of the validity and amount of the Claim.

Accordingly, Debtors' objection to Claim 1 is OVERRULED.

8. [22-10994](#)-A-13     **IN RE: NANCY JERKOVICH**  
[MHM-1](#)

MOTION TO DISMISS CASE  
8-3-2022    [[29](#)]

MICHAEL MEYER/MV

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

DISPOSITION:     Granted.

ORDER:             The court will issue an order.

Unless the chapter 13 trustee's motion is withdrawn before the hearing, the motion will be granted without oral argument for cause shown.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the debtor 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 default of the debtor is 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 Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Here, the chapter 13 trustee ("Trustee") asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) and (c)(4) for unreasonable delay by debtor that is prejudicial to creditors. Doc. #29. Specifically, Trustee asks the court to dismiss this case for the debtor's failure to: (1) appear at the scheduled § 341 meeting of creditors on July 26, 2022; (2) file a confirmable plan; (3) provide Trustee with any requested documents; and (4) make all payments due under the plan. Doc. #29. The debtor did not oppose.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth), 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) and (c)(4) for the debtor's failure to:

(1) appear at the scheduled § 341 meeting of creditors on July 26, 2022;  
(2) file a confirmable plan; (3) provide Trustee with any requested documents;  
and (4) make all payments due under the plan.

Trustee believes that conversion to chapter 7 and a review of the assets and liabilities by a chapter 7 trustee would be in the best interests of creditors because this is the debtor's third chapter 13 filing, the debtor has failed to disclose information or provide documents to Trustee in this bankruptcy case, coupled with the large bank deposits in a prior bankruptcy case that had a business, the nature of which was not disclosed. Decl. of Michael H. Meyer, Doc. #31.

However, because the debtor has failed to appear at the meeting of creditors and because the primary debt is secured debt, the court finds dismissal rather than conversion is in the best interests of creditors and the estate.

Accordingly, the motion will be GRANTED, and the case dismissed.

9. [18-11599](#)-A-13     **IN RE: SILVIA ABARCA**  
[HDN-3](#)

MOTION FOR COMPENSATION FOR HENRY D. NUNEZ, DEBTORS ATTORNEY(S)  
8-8-2022     [46]

SILVIA ABARCA/MV  
HENRY NUNEZ/ATTY. FOR DBT.

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

DISPOSITION:     Denied without prejudice.

ORDER:     The court will issue an order.

This matter is DENIED WITHOUT PREJUDICE for improper notice.

Notice of the hearing on this motion was sent by mail on August 8, 2022 with a hearing date set for September 1, 2022. Because the notice was sent on less than 28 days' notice, notice is governed by Local Rule of Practice ("LBR") 9014-1(f)(2). Pursuant to LBR 9014-1(f)(2), written opposition is not required, and any opposition may be raised at the hearing. However, the notice of hearing does not state that opposition may be raised at the hearing and does not comply with LBR 9014-1(d)(3)(B)(i).

MOTION TO EXTEND AUTOMATIC STAY  
8-18-2022    [\[10\]](#)

GEOFFREY PRINZ/MV  
GARY FRALEY/ATTY. FOR DBT.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                    Granted.

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

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. 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.

As a procedural matter, the Clerk's Matrix of Creditors used by the moving party to serve the motion does not comply with LBR 7005-1(d), which requires that the Clerk's Matrix of Creditors used to serve a pleading reflect the date of downloading. Here, the Clerk's Matrix of Creditors attached to the certificate of service does not indicate the date on which the matrix was generated. Doc. #14. The court encourages counsel to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules. The rules can be accessed on the court's website at <http://www.caeb.circ9.dcn/LocalRules.aspx>.

Debtor Geoffrey Dean Prinz ("Debtor") moves the court for an order extending the automatic stay pursuant to 11 U.S.C. § 362(c)(3)(B).

Debtor had a Chapter 13 case pending within the preceding one-year period prior to the filing of this bankruptcy case that was dismissed, Case No. 21-12158 (Bankr. E.D. Cal.) (the "Prior Case"). The Prior Case was filed on September 8, 2021 and dismissed on November 15, 2021. Decl. of Geoffrey Dean Prinz, Doc. #12. 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 August 10, 2022. Petition, Doc. #1. The automatic stay will terminate in the present case on September 9, 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 [the non-moving party] 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 timely file documents in the Prior Case. The clerk of the court issued a Notice of Incomplete Filing (the "Notice") on September 13, 2021, and on September 27, 2021, an Order Dismissing Case for Failure to Timely File Documents was filed after Debtor failed to comply with the Notice. See Case No. 21-12158, Doc. #1, 9, 17. Debtor's counsel acknowledges that the Prior Case was dismissed due to a clerical error by his office, which resulted in one of the schedules not to be scanned and filed. Decl. of Gary Ray Fraley, Doc. #13.

To rebut the presumption of bad faith, Debtor declared that the clerical error was not his fault and that he always cooperated with his attorney regarding anything needed for the bankruptcy case. Decl. of Geoffrey Dean Prinz, Doc. #12. Debtor also declared that he allowed the Prior Case to be dismissed because he initially filed bankruptcy for the sole purpose of saving his home from a tax lien sale, and the Mariposa tax collector postponed the tax sale to August 12, 2022. Prinz Decl., Doc. #12. Debtor further states that he has the income ability to maintain plan payments and is confident that a chapter 13 plan will be confirmed. Prinz Decl., Doc. #12. Debtor filed a proposed plan on August 10, 2022. Doc. #3. Debtor's Schedules I and J filed in this case list monthly income of \$2,886.00 and expenses of \$2,612.50, resulting in monthly net income of \$273.50 which Debtor proposes to apply \$271.00 to plan payments in this case. Schedules I and J, Doc. #1; Chapter 13 Plan, Doc. #3.

The court is inclined to find that Debtor's reasoning for the Prior Case being dismissed, along with Debtor filing of the necessary papers in this case, rebut the presumption of bad faith that arose from the failure to timely file documents in the Prior Case and that Debtor's petition commencing this case was filed in good faith. Further, there is reason to conclude that this case will result in a confirmed plan that will be fully performed.

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. #14), unless terminated by further order of the court.