UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday, November 9, 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. 21-11814-A-11 **IN RE: MARK FORREST**
CAE-1

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTARY PETITION
7-22-2021 [1]

LEONARD WELSH/ATTY. FOR DBT.

NO RULING.

2. 21-11814-A-11 **IN RE: MARK FORREST**
DJP-1

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
8-2-2022 [246]

MEGAN KILGORE/MV
LEONARD WELSH/ATTY. FOR DBT.
DON POOL/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

3. 21-11814-A-11 **IN RE: MARK FORREST**
LKW-16

CONTINUED MOTION TO CONFIRM CHAPTER 11 PLAN
7-22-2022 [238]

MARK FORREST/MV
LEONARD WELSH/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued for further proceedings.

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

On July 22, 2022, Mark Forrest ("Debtor"), the chapter 11 debtor and debtor-in-possession in this subchapter V bankruptcy case, filed a motion to confirm his third modified plan of reorganization dated July 22, 2022 (the "Plan"). Doc. #242. On August 25, 2022, secured creditors Kevin R. Kummerfeld and Sally Kummerfeld; Kate Spain; Ara Lee Spain, Trustee of the Residual Trust of the Ara Lee and Joyce Spain Family Trust of 1992; Karen Diane Spain; Cheryl Spain; Russell Spain; Gregory A. Kilgore and Megan K. Kilgore (collectively, "Creditor") timely filed written opposition to confirmation of the Plan. Doc. ##280-284.

In the Plan, Debtor starts with the Treasury Note Rate of 3.124% and adds an upward risk adjustment to reach the proposed interest rate of 6% instead of starting with the prime rate of interest, which was 4.75% on the day the Plan was filed,[1] and adding an upward risk adjustment pursuant to the United States Supreme Court authority under Till v. SCS Credit Corp., 541 U.S. 465 (2004). Supp. Brief, Doc. #336; Plan, Doc. #242. Debtor relies primarily on 2010-1 CRE Venture, LLC v. VDG Chicken, LLC (In re VDG Chicken, LLC), BAP No. NV-10-1278-HKiD, 2011 Bankr. LEXIS 1795, 2011 WL 3299089 (B.A.P. 9th Cir. Apr. 11, 2011), for his assertion that he can use the Treasury Note Rate instead of the prime rate to determine the interest rate to be paid on Creditor's claim under the Plan. Creditor objects to the proposed interest rate, among other objections to confirmation of the Plan.

At the initial hearing on the motion held on September 28, 2022, the court continued the hearing to permit simultaneous supplemental and reply briefs addressing the burden of proof with respect to determining the rate of interest to be paid with respect to Creditor's claim as well as the appropriate method for determining the interest rate ("Order") before addressing other aspects of Creditor's objections to confirmation of the Plan. Doc. #325. Pursuant to the Order, Debtor and Creditor filed simultaneous supplemental briefs on October 19, 2022, and filed simultaneous reply briefs on October 26, 2022. Doc. ##330-332, 336, 338 and 340.

The court has considered the supplemental and reply briefs as well as relevant legal authority, including the cases cited in the simultaneous supplemental and reply briefs. Based on the analysis below, the court determines that Debtor can start with an interest rate that is something other than the prime rate, although Debtor retains the burden of proof when Debtor seeks to use an interest rate in a plan of reorganization that is something other than the prime rate plus an upward risk adjustment.

In Till, a plurality of the United States Supreme Court analyzed four separate approaches to determining the appropriate interest rate for confirming a chapter 13 plan over the objection of a secured creditor. Till, 541 U.S. at 473-77. The plurality adopted the formula approach that "begins by looking to the national prime rate" because the prime rate "reflects the financial market's estimate of the amount a commercial bank should charge a creditworthy commercial borrower to compensate for the opportunity costs of the loan, the risk of inflation, and the relatively slight risk of default." Id. at 478-79. Thereafter, the bankruptcy court is to adjust the prime rate upwards "[b]ecause bankrupt debtors typically pose a greater risk of nonpayment than solvent commercial borrowers[.]" Id. at 479. Since Till, several courts have applied the formula approach adopted in Till in the context of chapter 11 plan confirmation. See, e.g., Mercury Capital Corp. v. Milford Conn. Assocs., L.P., 354 B.R. 1, 11-12 (D. Conn. 2006); VDG Chicken, 2011 Bankr. LEXIS 1795,at *20-*21 (quoting Mercury Capital).

Starting with the Treasury Note Rate instead of the prime rate is a very different starting place because the Treasury Note Rate does not include the same risk of default as reflected in the prime rate. As explained by the Ninth Circuit:

> The treasury rate is the government's cost of borrowing, which is relatively quite low because to the lender the government's

[1] Obtained on November 7, 2022, from the Federal Reserve Bank of St. Louis website at: https://fred.stlouisfed.org/series/PRIME. The court takes judicial notice of this information pursuant to Federal Rule of Evidence 201.

> obligation is a short-term, low risk investment. The obligation of a private borrower is quite different; its creditworthiness is not the same as the federal government's. It cannot borrow money on the favorable terms available to the government.
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> . . .
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> . . . Rates of interest on treasury obligations reflect the proper return on a riskless loan after adjustment for inflation. Only the estimated cost of deferring present use by the lender and the projected rate of inflation influence this rate. A lender to one other than the government also must include in his return a significant element to compensate for the risk of default.

United States v. Camino Real Landscape Maint. Contractors, Inc. (In re Camino Real Landscape Maint. Contractors, Inc.), 818 F.2d 1503, 1506 (9th Cir. 1987).

By proposing an interest rate that starts with the Treasury Note Rate instead of the prime rate, Debtor retains the burden to show that starting with the Treasury Note Rate is fair and equitable in light of Creditor's opposition to confirmation. As one bankruptcy court explained:

> The debtors, as plan proponents, bear the burden of proof on all elements required for confirmation. In the context of determining the appropriate interest rate in a cramdown situation, the burden generally shifts to the objecting creditor. However, when a debtor fails to show that the interest rate it offers is fair and equitable, it fails to satisfy its ultimate burden to establish that the Plan satisfies all the confirmation requirements under § 1129(b).

In re Bellows, 554 B.R. 219, 233 (Bankr. D. Alaska 2016) (footnotes omitted). This analysis is consistent with In re Tapang, 540 B.R. 701 (Bankr. N.D. Cal. 2015), in which the bankruptcy court stated that the secured creditor "bears the burden of establishing any risk factors to justify a higher-than-prime interest rate." Tapang, 540 B.R. at 707. Had Debtor proposed to start with the prime rate and then added an upward risk adjustment, as set forth in Till, the burden would have shifted to Creditor to show that the proposed prime rate plus the proposed upward adjustment was not fair and equitable. By starting with the less risky Treasury Note Rate, Debtor retains the burden to show that the interest rate proposed in the Plan is fair and equitable to Creditor.

At the hearing, Debtor and Creditor should be prepared to address how to proceed with respect to resolving Creditor's remaining objections to confirmation of the Plan in light of the foregoing.

4. 20-10945-A-12 **IN RE: AJITPAL SINGH AND JATINDERJEET SIHOTA**
LKW-6

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS ATTORNEY(S)
10-19-2022 [254]

LEONARD WELSH/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 Moving Party shall submit a proposed order after the hearing.

This motion was filed and served on at least 21 days' notice prior to the hearing date pursuant to Federal Rule of Bankruptcy Procedure 2002 and 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.

The Law Offices of Leonard K. Welsh ("Movant"), successor counsel for Ajitpal Singh and Jatinderjeet Kaur Sihota (collectively, "Debtors"), the debtors in this chapter 12 case, requests allowance of interim compensation in the amount of $2,810.00 and reimbursement for expenses in the amount of $158.21 for services rendered from July 1, 2022 through September 30, 2022. Doc. #254. Movant requests that the fees and expenses requested will be paid by Debtors from wages earned by Debtors and income generated from the operation of their business. Doc. #254; Decl. of Jatinderjeet Kaur Sihota, Doc. #257; Decl. of Leonard K. Welsh, Doc. #256.

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 12 case. 11 U.S.C. § 330(a)(1), (4)(B). The court may allow reasonable compensation to the chapter 12 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) preparing agriculture lease between Debtors and Harpreet Kloy and related motion to approve same; (2) communicating with the chapter 12 trustee and creditors; (3) advising Debtors regarding adversary proceeding and reviewing and approving a joint status statement in same; (4) advising Jatinderjeet Sihota in lawsuit pending in district court; and (5) general case administration. Ex. B, Doc. #258. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion on a final basis.

This motion is GRANTED. The court allows interim compensation in the amount of $2,810.00 and reimbursement for expenses in the amount of $158.21 to be paid in a manner consistent with the terms of the confirmed plan. Movant is allowed interim fees and costs pursuant to 11 U.S.C. § 331, subject to final review and

allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure. Movant may draw on any trust account held.

5. 22-10778-A-11 **IN RE: COMPASS POINTE OFF CAMPUS PARTNERSHIP B, LLC**
CAE-1

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
5-8-2022 [1]

NOEL KNIGHT/ATTY. FOR DBT.

NO RULING.

6. 22-10778-A-11 **IN RE: COMPASS POINTE OFF CAMPUS PARTNERSHIP B, LLC**
FW-1

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
7-13-2022 [58]

DAKOTA NOTE, LLC/MV
NOEL KNIGHT/ATTY. FOR DBT.
PETER FEAR/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

1. 22-10115-A-7 **IN RE: MELLISA XIONG**
JDR-1

OBJECTION TO CLAIM OF DEPARTMENT OF TREASURY-INTERNAL REVENUE SERVICE, CLAIM NUMBER 3
10-3-2022 [42]

MELLISA XIONG/MV
JEFFREY ROWE/ATTY. FOR DBT.

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on November 4, 2022. Doc. #47.

2. 22-11019-A-7 **IN RE: CATHRYN SMITH**
KL-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-24-2022 [77]

WILMINGTON SAVINGS FUND SOCIETY, FSB/MV
PETER BUNTING/ATTY. FOR DBT.
LIOR KATZ/ATTY. FOR MV.

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 Moving Party shall submit a proposed order after hearing.

This motion was filed and served on at least 14-days' notice 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.

The movant, Wilmington Savings Fund Society, FSB, as owner trustee of the Residential Credit Opportunities Trust VI-A ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to real property located at 33788 Bronco Lane, Squaw Valley, CA 93675 ("Property"). Doc. #77.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must

be determined on a case by case basis." In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985).

11 U.S.C. § 362(d)(2) allows the court to grant relief from the stay if the debtor does not have any equity in such property and such property is not necessary to an effective reorganization.

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor has failed to make at least 19 complete pre- and post-petition payments. Movant has produced evidence that the debtor is delinquent by at least $25,450.31, and the entire balance of $323,010.80 is due. Doc. #82.

However, the court finds that the debtor does have equity in the property. The property is valued at $350,000.00 and the debtor owes $326,385.45. Doc. #80. Therefore, the court will deny relief under 11 U.S.C. § 362(d)(2).

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit Movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded. No attorney fees will be awarded in relation to this motion. According to the debtor's Statement of Intention, the Property will be surrendered. Doc. #1.

The order shall also provide that the bankruptcy proceeding has been finalized for purposes of California Civil Code § 2923.5.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtor has failed to make at least 19 payments, both pre- and post-petition, to Movant and the debtor intends to surrender the Property.

3. 22-11019-A-7 **IN RE: CATHRYN SMITH**
PBB-1

MOTION TO COMPEL ABANDONMENT
10-7-2022 [53]

CATHRYN SMITH/MV
PETER BUNTING/ATTY. FOR DBT.
RESPONSIVE PLEADING

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 as required by Local Rule of Practice ("LBR") 9014-1(f)(1). On October 20, 2022, the chapter 7 trustee filed a written statement that he has no opposition to the motion provided that the order granting the motion confirms the debtor is limited to using 704 exemptions. Doc. #71. 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 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.

Cathryn Lynn Smith ("Debtor"), the chapter 7 debtors in this case, moves the court to compel the chapter 7 trustee to abandon the estate's interest in Debtor's real property located at 34201 Natoma Road, Auberry, CA 93602 ("Residence"). Mot., Doc. #53. Debtor asserts that, after subtracting the amount of secured liens and the amount of Debtor's homestead exemptions from the market value of the Residence, there would be no money available for the trustee to disburse to creditors and the Residence has no value to the bankruptcy estate. Decl. of Cathryn Lynn Smith, Doc. #56.

11 U.S.C. § 554(b) permits the court, on request of a party in interest and after notice and a hearing, to order the trustee to abandon property that is burdensome to the estate or of inconsequential value and benefit to the estate. Vu v. Kendall (In re Vu), 245 B.R. 644, 647 (B.A.P. 9th Cir. 2000). To grant a motion to abandon property, the bankruptcy court must find either that the property is (1) burdensome to the estate or (2) of inconsequential value and inconsequential benefit to the estate. Id. (citing In re K.C. Machine & Tool Co., 816 F.2d 238, 245 (6th Cir. 1987). However, "an order compelling abandonment [under § 554(b)] is the exception, not the rule. Abandonment should only be compelled in order to help the creditors by assuring some benefit in the administration of each asset. . . . Absent an attempt by the trustee to churn property worthless to the estate just to increase fees, abandonment should rarely be ordered." Id. (quoting K.C. Machine & Tool Co., 816 F.2d at 246).

Here, Debtor does not allege that the Residence is burdensome to the estate. Mot., Doc. #53. Therefore, Debtor must establish that the Residence is of inconsequential value and benefit to the estate. 11 U.S.C. § 554(b); Vu, 245 B.R. at 647. Debtor's Residence is valued at $350,000.00 and is encumbered by a deed of trust against the Residence in the amount of $167,561.31 held by Citadel Service Corp. Smith Decl., Doc. #56; Ex. B, Doc. #57. The Residence has an additional pre-petition lien held by Franchise Tax Board in the amount of $3,374.65 and another pre-petition lien for property taxes held by Fresno County Tax Collector in the amount of $3,358.75. Smith Decl., Doc. #56; Ex. C, Doc. #57. Under California Civil Procedure Code § 704.730, Debtor claimed a $189,050.00 exemption in the Property. Am. Schedule C, Doc. #42; Smith Decl., Doc. #56. The court finds that Debtor has met her burden of establishing by a preponderance of the evidence that the Residence is of inconsequential value and benefit to the estate. Moreover, the chapter 7 trustee has no opposition to the motion providing that Debtor is limited to using the 704 exemptions. Doc. #71.

Accordingly, this motion is GRANTED. To address the chapter 7 trustee's conditional non-opposition, counsel for the chapter 7 trustee shall approve the form of the proposed order granting this motion before the proposed order is submitted to the court. The order shall specifically identify the property abandoned.

4. 22-11019-A-7 **IN RE: CATHRYN SMITH**
PBB-1

MOTION TO COMPEL ABANDONMENT
10-7-2022 [54]

CATHRYN SMITH/MV
PETER BUNTING/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 October 13, 2022. Doc. #63.

5. 22-11652-A-7 **IN RE: JUDITH VOSSELER**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
10-11-2022 [15]

$3.00 FILING FEE PAID 10/13/22

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the filing fee due was paid on October 13, 2022. The case shall remain pending.

6. 22-11775-A-7 **IN RE: GERALDINE CASH**
TCS-1

MOTION TO EXTEND AUTOMATIC STAY
10-25-2022 [12]

GERALDINE CASH/MV
TIMOTHY SPRINGER/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.

Debtor Geraldine Cash ("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 that was dismissed, Case No. 20-10859 (Bankr. E.D. Cal.) (the "Prior Case"). The Prior Case was filed on March 5, 2020 and dismissed on August 18, 2022. See Case No. 20-10859, Doc. ##1, 78. 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 October 17, 2022. Petition, Doc. #1. The automatic stay will terminate in the present case on November 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 discloses that a chapter 13 first modified plan was confirmed on September 24, 2021, the Chapter 13 trustee ("Trustee") filed a Notice of Default and Intent to Dismiss Case (the "Notice") on July 8, 2022, 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 Case No. 20-10859, Doc. ##57, 71, 76, 78. Debtor acknowledges that the Prior Case was dismissed for failure to timely pay plan payments. Decl. of Geraldine Cash, Doc. #14.

In support of this motion to extend the automatic stay, Debtor declares that the plan payments in the Prior Case were not made because she was not able to keep up with her plan payments after her husband passed away. Cash Decl.,

Doc. #14. Debtor declares her circumstances have changed because the current case is a chapter 7 case and not chapter 13. Cash Decl., Doc. #14.

The court is inclined to find that Debtor's previous circumstances preventing successful payments in the Prior Case rebut the presumption of bad faith that arose from the failure of Debtor to perform the terms of a confirmed plan in the Prior Case and that Debtor's petition commencing this chapter 7 case was filed in good faith. Moreover, the court recognizes that Debtor has had a substantial change in her financial affairs since dismissal of the Prior Case because this case is a chapter 7 case.

Accordingly, the court is inclined to GRANT the motion and extend the automatic stay for all purposes only as to those parties identified in Debtor's motion (Doc. #12), unless terminated by further order of the court. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is necessary.