UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Wednesday, February 1, 2023
Department B – Courtroom #13
Fresno, California

Unless otherwise ordered, all hearings before Judge Lastreto are simultaneously: (1) **IN PERSON** in Courtroom #13 (Fresno hearings only), (2) via **ZOOMGOV VIDEO**, (3) via **ZOOMGOV TELEPHONE**, and (4) via **COURTCALL**. You may choose any of these options unless otherwise ordered. Parties in interest and members of the public may connect to ZoomGov, free of charge, using the information provided:

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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.

Post-Publication Changes: 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 any possible updates.

9:30 AM

1. 22-11410-B-13 **IN RE: HOWARD/KIM CRAUSBY**
DAB-3

MOTION TO CONFIRM PLAN
12-27-2022 [75]

KIM CRAUSBY/MV
DAVID BOONE/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Howard Franke Crausby and Kim Renee Crausby (collectively "Debtors") seek an order confirming the *Third Amended Chapter 13 Plan* dated December 10, 2022 ("Proposed Plan"). Doc. #75.

A near-identical, prior version of this motion was denied without prejudice on January 25, 2023 for failure to comply with the Local Rules of Practice ("LBR") and Federal Rules of Bankruptcy Procedure ("Rule"). Docs. ##80-81. This second motion will also be DENIED WITHOUT PREJUDICE.

First, Debtors filed an earlier motion to confirm the Proposed Plan on December 16, 2022, which was set for hearing on January 25, 2023. Doc. #70. Debtors continued the hearing by filing this second motion on December 27, 2022, which constituted an unauthorized continuance without a court order. LBR 9014-1(j).

Second, this motion and its predecessor fail to comply with Rule 9013 and LBR 9014-1(d)(3)(A). Rule 9013 requires a request for an order to be by written motion, unless made during a hearing. "The *motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought*." Rule 9013 (emphasis added). This particularity requirement is restated in the local rules:

> The application, motion, contested matter, or other request for relief shall set forth the relief or order sought and *shall state with particularity the factual and legal grounds therefor*. Legal grounds for the relief sought means citation to the statute, rule, case, or common law doctrine that forms the basis of the moving party's request but does not include a discussion of those authorities or argument for their applicability.

LBR 9014-1(d)(3)(A) (emphasis added).

Here, the motion states: (a) Debtors filed chapter 13 bankruptcy on August 17, 2022, (b) the chapter 13 trustee's objection to claimed exemptions was resolved and withdrawn, (c) Debtors filed the Proposed Plan on October 10, 2022 to resolve remaining objections by the trustee, (d) Debtors have made the appropriate changes, and (e) Debtors have made additional payments and shall be current at the time of the hearing. Docs. #70; #75.

This is insufficient. Although Debtors did include some of the required factual bases in the motion, it omits citation to any statutes, caselaw, or local rules. An analysis of the elements required for confirmation of a plan under 11 U.S.C. § 1325 was entirely omitted from the motion. The court notes that these legal elements were discussed in the declarations in support of the motion, but they should have also been included in the motion.

For the above reasons, this motion will be DENIED WITHOUT PREJUDICE.

2. 22-12012-B-13 **IN RE: REYNALDO RODRIGUEZ**

OBJECTION TO CONFIRMATION OF PLAN BY ALLY BANK
1-12-2023 [27]

ALLY BANK/MV
MICHAEL VANLOCHEM/ATTY. FOR MV.

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

DISPOSITION: Overruled without prejudice. Creditor to file amended objection, if any, within 7 days of the order.

ORDER: The court will issue an order.

Ally Bank ("Creditor") objects to confirmation of the *Chapter 13 Plan* filed on December 5, 2022 by Reynaldo G. Rodriguez ("Debtor"). Doc. #27.

This objection will be OVERRULED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

First, the objection and notice of hearing did not contain a Docket Control Number. Docs. ##27-28. LBR 9004-2(a)(6), (b)(5), (b)(6), (e)(3), LBR 9014-1(c), and (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require a DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN. The DCN shall consist of not more than three letters, which may be the initials of the attorney for the

moving party (e.g., first, middle, and last name) or the first three initials of the law firm for the moving party, and the number that is one number higher than the number of motions previously filed by said attorney or law firm in connection with that specific bankruptcy case. Each separate matter must have a unique DCN linking it to all other related pleadings.

Second, the notice of hearing did not comply with LBR 3015-1(c)(4), 9014-1(d)(3)(B)(i), and (f)(2), which require the notice of hearing to advise potential respondents that no written response to the objection is necessary and any opposition to the objection must be presented at the hearing. Doc. #28.

Third, the notice of hearing did not comply with LBR 9014-1(d)(3)(B)(iii), which requires the objecting party to notify respondents that they can determine: (a) whether the matter has been resolved without oral argument; (b) whether the court has issued a tentative ruling that can be viewed by checking the pre-hearing dispositions on the court's website at http://www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing; and (c) parties appearing telephonically must view the pre-hearing dispositions prior to the hearing. *Id.*

Fourth, LBR 9004-2(e)(1), (e)(2), and LBR 9014-1(e)(3) require the proof of service to itself by filed as a separate document, and copies of the pleadings and documents served "SHALL NOT" be attached to the proof of service filed with the court. Here, the certificates of service were attached to each document. Docs. ##27-28. Creditor may use one certificate of service for all documents related to a single matter with the same DCN. LBR 9004-2(e)(3).

Fifth, LBR 7005-1 requires attorneys to prove service using the *Official Certificate of Service Form*, EDC 007-005. Here, Creditor did not use the required form EDC 007-005. Docs. ##27-28.

Sixth, LBR 9004-2(d) requires exhibits to be filed as a separate exhibit document, to include an exhibit index at the start of the document identifying by exhibit number or letter each exhibit with the page number at which it is located, and to use consecutively numbered pages, including any separator, cover, or divider sheets. Here, the exhibits were not consecutively numbered, did not include an exhibit index, and were attached to the objection instead being filed as one separate exhibit document. Doc. #27.

For the above reasons, this objection to confirmation will be OVERRULED WITHOUT PREJUDICE. Since LBR 3015-1(c)(4) sets the deadline to file an objection to confirmation of the original plan to seven days after the date first set for the meeting of creditor and this objection was timely, Creditor will be permitted to file an amended objection within seven (7) days of the date of entry of this order.

3. 22-12012-B-13 **IN RE: REYNALDO RODRIGUEZ**
AP-1

OBJECTION TO CONFIRMATION OF PLAN BY MCLP ASSET COMPANY, INC.
1-16-2023 [32]

MCLP ASSET COMPANY, INC./MV
WENDY LOCKE/ATTY. FOR MV.

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

DISPOSITION: Continued to March 1, 2023 at 9:30 a.m.

ORDER: The court will issue an order.

MCLP Asset Company ("Creditor") objects to confirmation of the *Chapter 13 Plan* filed on December 5, 2022 ("Proposed Plan") by Reynaldo G. Rodriguez ("Debtor") under Local Rule of Practice ("LBR") 3015-1(c)(4). Doc. #32.

First, Creditor objects to the Proposed Plan because it fails to provide for the full value of its claim as required under § 1325(a)(5)(B)(ii) and fails to promptly cure arrears as required by § 1325(a)(6). Creditor has pre-petition arrears of $48,533.25, but the Proposed Plan only proposes to cure $30,800.00 in arrears. To fund the increased arrearage, Debtor will have to increase his monthly payment to Creditor by approximately $295.55 per month over 60 months.

Second, Creditor contends that the Proposed Plan is not feasible. Debtor's amended schedules indicate that Debtor has $611.52 in monthly disposable income and Debtor has proposed monthly payments of $570.39 per month. Therefore, Debtor has approximately $40.00 in excess income, which is insufficient to pay the additional $296.55 per month required to cure Creditor's arrears.

Lastly, Creditor objects because the Proposed Plan fails to provide post-petition payments to be paid through the plan. The post-petition monthly payment dividend to Creditor as a Class 1 creditor is $0.00.

This objection will be CONTINUED to March 1, 2023 at 9:30 a.m. Unless this case is voluntarily converted to chapter 7, dismissed, or Creditor's objection to confirmation is withdrawn, the Debtor shall file and serve a written response not later than February 15, 2023. The response shall specifically address each issue raised in the objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of Debtor's position. Creditor shall file and serve a reply, if any, by February 22, 2023.

If Debtor elects to withdraw the plan and file a modified plan in lieu of filing a response, then a confirmable, modified plan shall be

filed, served, and set for hearing not later than February 22, 2023. If the Debtor does not timely file a modified plan or a written response, this objection will be sustained on the grounds stated in the objection without a further hearing.

4. 22-11917-B-13 **IN RE: JUAN/ALMA GARCIA**
MHM-1

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
1-17-2023 [15]

STEPHEN LABIAK/ATTY. FOR DBT.
DISMISSED 01-26-2023

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

Debtors Juan Garcia and Alma E. Garcia voluntarily dismissed this chapter 13 case on January 27, 2023. Doc. #24. Accordingly, the chapter 13 trustee's objection will be OVERRULED AS MOOT.

5. 22-11969-B-13 **IN RE: KARLA GARCIA**
MHM-2

MOTION TO DISMISS CASE
12-29-2022 [29]

MICHAEL MEYER/MV

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The court will issue an order.

Chapter 13 trustee Michael H. Meyer ("Trustee") asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) for unreasonable delay by debtor that is prejudicial to creditors by failing to appear at the scheduled 341 Meeting of Creditors, failure to provide documents to the trustee, failure to file official forms, a complete chapter 13 plan, and complete and accurate schedules. Doc #29. Karla Garcia ("Debtor") did not oppose.

Since Debtor is *pro se*, this matter will be called and proceed as scheduled. Unless Trustee's motion is withdrawn before the hearing, the motion will be GRANTED.

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 creditors, the Debtor, 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. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

The record shows that there has been unreasonable delay by the Debtor that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)). Debtor failed to file complete and accurate schedules, failed to provide required documentation to the trustee, failed to appear at the 341 Meeting of Creditors, failed to file a complete Plan, failed to file all tax returns as required by 11 U.S.C. § 1308(a), failed to provide proof of income for the last 6 months as required by 11 U.S.C. § 521(a) (1)(B)(iv), and failed to complete the Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment (11 U.S.C § 521). Docs. #29; #31.

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) for unreasonable delay that is prejudicial to creditors.

In addition, Trustee has reviewed the schedules and determined Debtor's significant assets—vehicles and real property—are over encumbered, and the remaining assets are exempted. Doc. #29. Therefore, dismissal, rather than conversion, serves the interests of creditors and the estate.

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

6. 22-11972-B-13 **IN RE: DAX TURNER**
MHM-1

MOTION TO DISMISS CASE
1-4-2023 [20]

MICHAEL MEYER/MV
SCOTT LYONS/ATTY. FOR DBT.

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 already entered on January 27, 2023. Doc. #27. Accordingly, the motion will be DENIED AS MOOT.

7. 22-12086-B-13 **IN RE: HILDA CAMPOS**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
1-12-2023 [16]

MARK ZIMMERMAN/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: The minutes of the hearing will be the court's findings and conclusions.

ORDER: The court will issue an order.

This matter will proceed as scheduled. If the fees due at the time of the hearing have not been paid prior to the hearing, the case will be dismissed on the grounds stated in the OSC.

If the installment fees due at the time of hearing are paid before the hearing, the order permitting the payment of filing fees in installments will be modified to provide that if future installments are not received by the due date, the case will be dismissed without further notice or hearing.

11:00 AM

1. 22-11502-B-7 **IN RE: RALPH/VICKI CARGILL**
22-1027 CAE-1

STATUS CONFERENCE RE: COMPLAINT
12-6-2022 [1]

EDMONDS V. CARGILL ET AL
ANTHONY JOHNSTON/ATTY. FOR PL.
DISMISSED 1/3/23

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

DISPOSITION: Dropped as moot.

ORDER: The court will issue an order.

This adversary proceeding was dismissed on January 3, 2023. Doc. #11. Accordingly, this status conference will be dropped and taken off calendar as moot.

2. 22-11127-B-7 **IN RE: SCOTT FINSTEIN**
22-1017 KR-1

MOTION TO STRIKE
12-20-2022 [27]

NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURG V.
KAREL ROCHA/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted; Debtor to file conforming Amended Answer within 14 days of entry of this order.

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

Plaintiff National Union Fire Insurance Company of Pittsburgh, PA ("Plaintiff") moves for an order striking debtor Scott Allen Finstein's ("Defendant") Answer. Doc. #27. Debtor did not oppose.

This matter will be called and proceed as scheduled because Debtor is not represented by counsel. The court is inclined to GRANT this motion and STRIKE Debtor's Answer.

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 Defendant 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, Defendant's default is entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

As a preliminary matter, this motion reuses an old Docket Control Number. LBR 9004-2(a)(6), (b)(5), (b)(6), (e)(3), LBR 9014-1(c), and (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require a DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN. The DCN shall consist of not more than three letters, which may be the initials of the attorney for the moving party (e.g., first, middle, and last name) or the first three initials of the law firm for the moving party, and the number that is one number higher than the number of motions previously filed by said attorney or law firm in connection with that specific bankruptcy case. Each separate matter must have a unique DCN linking it to all other related pleadings.

Here, Plaintiff filed a prior motion to strike Defendant's original Answer on October 11, 2022, which was granted on November 9, 2022. Docs. #8; #17-18. The DCN for that motion was KR-1. This motion to strike the second Answer was filed on December 20, 2022. Doc. #27. The DCN for this motion is also KR-1, so the motion does not comply with the local rules. Each new matter must have a different, unused DCN.

Typically, this motion would be denied without prejudice without a hearing as a result of this deficiency. However, Defendant's Answer, on its face, does not comply with the Federal Rules Civil Procedure ("Civ. Rule"), as incorporated by the Federal Rules of Bankruptcy Procedure ("Rules"). Doc. #23. To avoid unduly delaying this adversary proceeding by requiring Plaintiff to refile the motion, the court will *sua sponte* suspend the local rules regarding DCNs in this instance only under LBR 1001-1(f). Counsel is advised to review the local rules and ensure procedural compliance in subsequent matters.[1]

Civ. Rule 8(b), as *incorporated by* Rule 7008, requires a responsive pleading to: (A) state in short and plain terms the party's defenses to each claim asserted against it; and (B) admit or deny the allegations asserted against it by an opposing party. Here, Defendant's Answer begins by describing the allegations in this action as fictitious, false, atrocious, and offending. Doc. #23. Defendant claims to have no permanent home, job, or money, so "it makes no sense to continue or allow" this action "that will have no monetary gain." *Id.* Defendant failed to admit or deny each allegation in the complaint and fails to provide asserted defenses. Defendant responded to allegations 11-12, 14-18, 20-21, 23-26, 28, 31-34, 36, 40-42, 44, 46-

47, 50, 52-54, 60, and 62-66. Additionally, the Answer fails to include a caption or pleading format and fails to provide Defendant's address and telephone number.

Under Civ. Rule 12(f), the court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter on motion by a party either before responding to the pleading, or within 21 days after being served with the pleading if a response is not required.

Accordingly, the court will STRIKE Defendant's Answer because it does not comply with the rules of pleading under Civ. Rule 8(b). Defendant shall file an amended, conforming answer to the complaint not later than 14 days after entry of this order. If Defendant does not timely file an amended answer, Plaintiff may seek entry of default.

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[1] *See* LBR, United States Bankruptcy Court, Eastern District of California, https://www.caeb.uscourts.gov/documents/Forms/LocalRules/LocalRulesSeptember2022.pdf (Eff. Dec. 2022).

3. 22-11540-B-11 **IN RE: VALLEY TRANSPORTATION, INC.**
22-1025 CAE-1

CONTINUED STATUS CONFERENCE RE: COMPLAINT
10-24-2022 [1]

VALLEY TRANSPORTATION, INC. V. MENDOZA
RILEY WALTER/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

The court is in receipt of *Plaintiff's Adversary Proceeding Status Conference Statement* filed January 25, 2023. Doc. #50. This status conference will be called and proceed as scheduled.

4. 18-11651-B-11 **IN RE: GREGORY TE VELDE**
19-1033 MB-6

MOTION TO COMPEL
1-3-2023 [624]

SUGARMAN V. IRZ CONSULTING, LLC ET AL
JOHN MACCONAGHY/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. Order preparation to be determined at the hearing.

Liquidating Trustee Randy Sugarman ("Plaintiff") moves for an order compelling IRZ Consulting, LLC ("Defendant" or "IRZ") to provide further answers to Interrogatories No. 1 & 2. Doc. #624.

Defendant opposes being compelled to respond to Interrogatory No. 1 but agrees to amend its responses such that this motion will be moot with respect to Interrogatory No. 2 by the time of the hearing. Doc. #639.

Plaintiff replied. Doc. #653.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled. Plaintiff filed a separate statement as required by LBR 9014-2.

Plaintiff served Interrogatory No. 1 and Defendant responded as follows:

> **INTERROGATORY NO. 1**:
> State the amount of liability insurance coverage remaining for YOU as of September 1, 2022, for the damages claimed in Plaintiff's Complaint.
>
> **RESPONSE**:
> In addition to the General Objections, IRZ objects to this interrogatory to the extent that it seeks information not reasonably calculated to lead to the discovery of admissible evidence and is not related to the claims or defenses in this lawsuit. The balance of IRZ's insurance coverage is not a required disclosure under Fed.R.Civ.P. 26(a)(1)(A)(iv) and courts will not require

> disclosure of such information. See *Excelsior College v. Frye* (S.D Cal. 2006) 233 F.R.D. 583 (holding that plaintiff was not entitled to production of information from defendants regarding amount of their liability policy remaining to satisfy any judgment in the action). IRZ will not provide a response to Interrogatory No. 1.

Doc. #628. Plaintiff cites to the rationale from the Official Comments to the 1970 Amendment to Fed. R. Civ. P. ("Civ. Rule") 26, which provides:

> Disclosure of insurance coverage will enable counsel for both sides to make the same realistic appraisal of the case, so that settlement and litigation strategy are based on knowledge and not speculation. It will conduce settlement and avoid protracted litigation in some cases, though in others it may have an opposite effect. The amendment is limited to insurance coverage, which should be distinguished from any other facts concerning defendant's financial status (1) because insurance is an asset created to specifically satisfy the claim; (2) because the insurance company ordinarily controls the litigation; (3) because information about coverage is available only from defendant or his insurer; and (4) because disclosure does not involve a significant invasion of privacy.

Fed. R. Civ. P. 26(a)(1), advisory committee's note to 1970 amendment.

Additionally, Trustee cites *Union Carbide Corp.*, where a court overruled a defendant's objection to an interrogatory requesting the remaining available coverage on an insurance policy covering unrelated third-party claims. Doc. #628, citing *Union Carbide Corp. v. Travelers Indemn. Co.*, 61 F.R.D. 411, 413 (W.D. Penn 1973)("[W]e believe that the possible exhaustion of policy limits by other claims are matters subject to discovery. . ."). Since Defendant's defense costs are a conflicting claim against the available coverage limits, Trustee contends that it is meaningless to require disclosure of available coverage if that coverage can be completely or substantially exhausted during the course of litigation.

Defendant responds that it is not required to provide further insurance-related disclosures after the initial disclosure is made. Doc. #638, citing *SierraPine v. Refiner Prod. Mfg. Inc.*, 275 F.R.D. 604, 609 (E.D. Cal. 2011) ("[D]istrict courts across the country do not allow pre-judgment discovery regarding a defendant's financial condition or ability to satisfy a judgment—aside from those insurance-

related disclosures made pursuant to [Civ.] Rule 26(a)(1)(A)(iv), or where punitive damages are available—on grounds that such discovery is not relevant to the parties' claims or defenses and is not reasonably calculated to lead to the discovery of admissible evidence."), citing *Dickson v. Nat'l Maint. & Repair of Ky., Inc.*, No. 5:08-CV-8, 2011 U.S. Dist. LEXIS 71672, 2011 WL 2610195, at **1-2 (W.D. Ky. July 1, 2011) (denying motion to reopen discovery to permit plaintiff to seek discovery of reservation of rights letters and information about the defendant's assets and ability to pay a judgment); *Ranney-Brown Distribs., Inc. v. E.T. Barwick Indus., Inc.*, 75 F.R.D. 3, 5 (S.D. Ohio 1977) ("Ordinarily, [Civ.] Rule 26 will not permit the discovery of facts concerning a defendant's financial status, or ability to satisfy a judgment, since such matters are not relevant, and cannot lead to the discovery of admissible evidence); *DiNapoli v. Int'l Alliance of Theatrical Stage Emples. Local 8*, No. 09-5924, 2011 U.S. Dist. LEXIS 27895, 2011 WL 1004576, at *7 (E.D. Pa. Mar. 18, 2011) ("If the plaintiff does not claim punitive damages, or if punitive damages are unavailable, the court will not allow discovery to determine whether the defendant has the means to satisfy a judgment because a defendant's ability to satisfy a judgment has little to do with the subject matter of the litigation notwithstanding a claim for punitive damages."); *Hallford v. Cal. Dep't of Corr.*, No. CIV S-05-0573 FCD DAD P, 2010 U.S. Dist. LEXIS 35184, 2010 WL 921166, at *2 (E.D. Cal. Mar. 12, 2010) (denying, on relevance grounds among others, plaintiff's motion to compel the production of a copy of salary schedules for employees in the individual defendants' employment positions for the purpose of considering an offer of settlement); *Lincoln Elec. Co. v. MPM Techs., Inc.*, No. 1:08-CV-2853, 2009 U.S. Dist. LEXIS 68421, 2009 WL 2413625, at *3 & n.2 (N.D. Ohio Aug. 5, 2009) (questioning the wisdom of the prevailing rule, but denying on relevance grounds plaintiff's motion to compel discovery responses regarding the defendant's financial status or ability to satisfy a judgment in a breach of contract and warranties action); *Mack Boring & Parts Co. v. Novis Marine, Ltd.*, Civil Action No. 06-2692 (HAA), 2008 U.S. Dist. LEXIS 98479, 2008 WL 5136955, at **1-3 (D.N.J. Dec. 5, 2008) (collecting cases and denying motion to compel discovery of defendant's ability to satisfy a soon-to-be entered judgment in a contract-based action where punitive damages were not implicated); *U.S. EEOC v. Ian Schrager Hotels, Inc.*, Case No. CV 99-0987-GAF(RCx), 2000 U.S. Dist. LEXIS 21501, 2000 WL 307470, at *4 (C.D. Cal. Mar. 8, 2000) (granting in part a motion to compel in a Title VII action, requiring the defendants to produce their financial information so plaintiff could determine, relative to a claim for punitive damages, whether defendants had attempted to transfer income or assets to others to avoid potential liability if defendants lose the pending litigation); *cf. U.S. for the Use and Benefit of P.W. Berry Co. v. Gen. Elec. Co.*, 158 F.R.D. 161, 164 (D. Or. 1994) (granting motion for protective order in a breach of contract action, precluding pre-judgment discovery of corporate and individual financial information including tax returns and financial statements, because that information as not relevant within the meaning of [Civ.] Rule

26(b)(1))). Therefore, Defendant argues that Ninth Circuit District Courts only require initial insurance-related disclosures pursuant to Civ. Rule 26(a)(1)(A)(iv), and there is no burden on a party to provide further insurance-related disclosures after the initial disclosure is made. Doc. #638, citing *Excelsior College v. Frye*, 233 F.R.D. 583 (S.D. Cal. 2006).

Defendant distinguishes *Union Carbide Corp.* from the present case in that an insurance dispute was at issue there, and no insurance issues are present here. Doc. #638, citing *Union Carbide Corp.*, 61 F.R.D. at 412-13.

In reply, Plaintiff notes that *Excelsior* held that a party does not have a duty to update its Civ. Rule 26 Initial Disclosures to reflect the "erosion" of an insurance policy to pay defense costs but left open the question of whether such information could be obtained through an interrogatory. Doc. #653, citing *Excelsior*, 233 F.R.D. at 583 n.1. And even if *Union Carbide Corp.* is inapplicable due to an insurance issues in dispute, another case, *Moslimani*, does involve a liability policy eroded by unrelated third-party claims. *See*, *Moslimani v. Union Valley Corp.*, 271 N.J. Super. 147, 638 A.2d 171 (Super Ct. 1993). The *Moslimani* court reasoned:

> Here, plaintiffs only seek information from Century as to what funds remain available on the policy. Due to the nature of the type of insurance maintained by Century during this period of time, i.e., an aggregate policy, it is of little use to plaintiffs to know what the original policy limit was. Since other claims have eroded the policy limits, plaintiffs seek from Century information that would identify the amount left available to satisfy any judgment that they may obtain against Century.
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> . . .
>
> Neither party has been able to refer this court to any authority that would clearly dictate whether an identification of the remaining coverage on an aggregate policy is discoverable. Nevertheless, Century's position is undoubtedly anachronistic. Century argues that its "aggregate status report, if provided to plaintiffs' counsel, would allow an improper intrusion into the settlement bargaining process, as opposing counsel could be permitted to learn exactly how much money is available for settlement and defense costs." That is exactly the reason why discovery of insurance is permitted. It is hardly helpful to the settlement process to shield from the claimant the extent of insurance

> available. Century should have anticipated that an aggregate policy might give rise to the concerns it now raises. But it is no answer to the appropriate request of plaintiffs to say that they should not be made aware of the current policy limits available on their claim."

Moslimani, 271 N.J. Super at 150-51.

Moslimani appears to be applicable while Defendant's other cases are distinguishable. *SierraPine*, 275 F.R.D. at 607-08, 611 (involved a broad attempt to acquire information about every person involved with and all documents related to a release agreement that was not an insurance policy and could not be treated as such for the purposes of disclosure; and although the court ultimately denied the request to compel additional responses to interrogatories, the plaintiff was ordered to supplement its mandatory disclosures required under Civ. Rule 26(a)(1)(A)(iv) to provide the opposing party with an ability to ascertain whether any insurance business remains liable to satisfy all or part of a judgment, or to reimburse and indemnify the defendant); *Dickson*, 2011 U.S. Dist. LEXIS 71672 at *3 (although the court denied the request to re-open discovery, the defendant "agreed to provide answers to Plaintiff's insurance coverage interrogatories and requests for documents. Defendant objected, however, to Plaintiff's proposed discovery related to Defendant's assets."); *Ranney-Brown Distribs.*, 75 F.R.D. at 7 (involved a request to produce minutes from a meeting of the plaintiff's Board of Directors, a memorandum prepared in the course of obtaining legal advice, and handwritten documents already disclosed that would be burdensome to locate); *DiNapoli*, 2011 U.S. Dist. LEXIS 27895 at *19 (involved a request for all profit and loss statements from the years 2004 to 2011); *Hallford*, 2010 U.S. Dist. LEXIS 35184 at **3-4 (involved a request to compel production of a generalized salary schedule for employees for settlement offer purposes); *Lincoln Elec. Co.*, 2009 U.S. Dist. LEXIS 68421 at *2 (sought to compel the defendant's principal to provide deposition testimony regarding all financial matters relating to the defendant, all matters relating to the Defendant's research and development department, and about the principal's personal financial status); *Mack Boring & Parts Co.*, 2008 U.S. Dist. LEXIS 98479, at *1 (involved discovery related to a sale of assets by the defendant to a third-party private equity group); *United States EEOC v. Ian Schrager Hotels*, 2000 U.S. Dist. LEXIS 21501 at **1-21) (sought to broadly obtain financial information regarding parent or affiliated corporations, shareholders, officers, and directors); *U.S. for the Use and Benefit of P.W. Berry Co. v. Gen. Elec. Co.*, 158 F.R.D. 161, 164 (D. Or. 1994) (protective order related to tax returns and financial statements that were not reasonably calculated to lead to admissible evidence). None of the cases cited by Defendant are applicable here.

Civ. Rule 26(a)(1)(iv) requires a party, without awaiting a discovery request, to provide for inspection and copying any insurance agreement

under which an insurance business may be liable to satisfy all or part of a possible judgment in the action, or to indemnify or reimburse for payments made to satisfy the judgment.

Under Civ. Rule 26(e)(1), Defendant is required to supplement or correct its initial disclosure or responses to an interrogatory in a timely manner if it learns that in some material respect, the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in a writing.

Here, Plaintiff is not seeking broad information about Defendant's financial condition. It is merely seeking updated insurance policy limits, which would otherwise be required under Civ. Rule 26(a)(1)(iv) and updated under (e)(1).

This motion will be called and proceed as scheduled. The court is inclined to GRANT the motion and order Defendant, within 21 days, to supplement or correct (1) its response to Interrogatory No. 1, and (2) if incomplete or incorrect, its initial disclosure under Civ. Rule 26(a)(1)(iv).