

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

Honorable Fredrick E. Clement
Fresno Federal Courthouse
2500 Tulare Street, 5th Floor
Courtroom 11, Department A
Fresno, California

PRE-HEARING DISPOSITIONS

DAY: WEDNESDAY

DATE: MAY 1, 2019

CALENDAR: 10:00 A.M. CHAPTER 7 ADVERSARY PROCEEDINGS

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. 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.

1. [18-11240](#)-A-7 **IN RE: DIANA XAVIER**
[18-1083](#) [SFR-1](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH RIVER X
4-3-2019 [\[23\]](#)

MANFREDO V. RIVER-X

Final Ruling

Motion: Approve Compromise of Controversy

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

APPROVAL OF COMPROMISE

In determining whether to approve a compromise under Federal Rule of Bankruptcy Procedure 9019, the court determines whether the compromise was negotiated in good faith and whether the party proposing the compromise reasonably believes that the compromise is the best that can be negotiated under the facts. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1982). More than mere good faith negotiation of a compromise is required. The court must also find that the compromise is fair and equitable. *Id.* "Fair and equitable" involves a consideration of four factors: (i) the probability of success in the litigation; (ii) the difficulties to be encountered in collection; (iii) the complexity of the litigation, and expense, delay and inconvenience necessarily attendant to litigation; and (iv) the paramount interest of creditors and a proper deference to the creditors' expressed wishes, if any. *Id.* The party proposing the compromise bears the burden of persuading the court that the compromise is fair and equitable and should be approved. *Id.*

The movant requests approval of a compromise. The compromise is reflected in the settlement agreement attached to the motion as an exhibit. ECF No. 28. Based on the motion and supporting papers, the court finds that the compromise presented for the court's approval is fair and equitable considering the relevant *A & C Properties* factors. The compromise or settlement will be approved.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The chapter 7 trustee's motion to approve a compromise has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The court hereby approves the compromise that is reflected in the settlement agreement attached to the motion an exhibit and filed at docket no. 28.

2. [14-10260](#)-A-7 **IN RE: PETRA ENRIQUEZ**
[19-1021](#) [DRJ-1](#)

MOTION FOR ENTRY OF DEFAULT JUDGMENT
4-2-2019 [\[14\]](#)

ENRIQUEZ V. HEREDIA ET AL
DAVID JENKINS/ATTY. FOR MV.

Final Ruling

Motion: Entry of Default Judgment Determining Violation of the Discharge Injunction

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by moving party

The clerk has entered default against the defendants in this proceeding. Their defaults were entered because the defendants failed to appear, answer or otherwise defend against the action brought by the plaintiff. Fed. R. Civ. P. 55(b)(2), *incorporated by* Fed R. Bankr. P. 7055.

Fed. R. Civ. P. 55(b)(2) provides that:

"A default judgment may be entered against a minor or incompetent person only if represented by a general guardian, conservator, or other like fiduciary who has appeared. If the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least 7 days before the hearing. The court may conduct hearings or make referrals – preserving any federal statutory right to a jury trial – when, to enter or effectuate judgment, it needs to:

(A) conduct an accounting;

(B) determine the amount of damages;

(C) establish the truth of any allegation by evidence; or
(D) investigate any other matter."

The factors courts consider in determining whether to enter a default judgment include: (i) the possibility of prejudice to the plaintiff, (ii) the merits of the plaintiff's substantive claim, (iii) the sufficiency of the complaint, (iv) the amount at stake, (v) the possibility of a dispute over material facts, (vi) whether the default was due to excusable neglect, and (vii) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits. *Valley Oak Credit Union v. Villegas* (In re Villegas), 132 B.R. 742, 746 (B.A.P. 9th Cir. 1991).

The plaintiff has requested that the court enter default judgment against the defendants on the claims determining that the defendants violated the plaintiff's June 2, 2014 discharge by obtaining a state court judgment against the plaintiff on March 25, 2016, after the plaintiff received a chapter 7 bankruptcy discharge in the underlying bankruptcy case. The defendants also recorded an abstract of the judgment with the Fresno County Recorder on January 2, 2018. The plaintiff seeks no monetary damages against the defendants.

Having accepted the well-pleaded facts in the complaint as true, and for the reasons stated in the motion and supporting papers, the court will grant the motion and enter default judgment for the plaintiff on the claims brought against the defendants in this adversary proceeding.

The court has the authority to make discharge violation determinations. See 11 U.S.C. §§ 105(a), 524(a).

Based on the undisputed facts, the defendants Wencelaso Heredia and Maria Heredia's actions, of obtaining a post-discharge judgment against the plaintiff and then recording an abstract of that judgment with the Fresno County Recorder, violated the plaintiff's discharge injunction.

Given the foregoing, the merits of the plaintiff's claims are sound. Both defendants were served with the complaint and summons. Their defaults were not entered due to excusable neglect. A default judgment against the defendants is warranted. No monetary relief is awarded. The court will only declare the violations of the discharge injunction. After entry of an order granting this motion, the court will enter a judgment declaring the violations, as prescribed by this ruling. The plaintiff shall lodge both the order and judgment within 30 days of the hearing date on this motion.

3. [17-12781](#)-A-7 **IN RE: DALIP NIJJAR**
[17-1066](#) [FW-10](#)

MOTION FOR EXAMINATION AND FOR PRODUCTION OF DOCUMENTS
3-27-2019 [[280](#)]

SALVEN V. NIJJAR ET AL
PETER SAUER/ATTY. FOR MV.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped from calendar as moot.

4. [17-12781](#)-A-7 **IN RE: DALIP NIJJAR**
[17-1066](#) [FW-8](#)

MOTION FOR EXAMINATION AND FOR PRODUCTION OF DOCUMENTS
3-27-2019 [[274](#)]

SALVEN V. NIJJAR ET AL
PETER SAUER/ATTY. FOR MV.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped from calendar as moot.

5. [17-12781](#)-A-7 **IN RE: DALIP NIJJAR**
[17-1066](#) [FW-9](#)

MOTION FOR EXAMINATION AND FOR PRODUCTION OF DOCUMENTS
3-27-2019 [[277](#)]

SALVEN V. NIJJAR ET AL
PETER SAUER/ATTY. FOR MV.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped from calendar as moot.

6. [18-11240](#)-A-7 **IN RE: DIANA XAVIER**
[18-1083](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
11-19-2018 [[1](#)]

MANFREDO V. RIVER-X
SHARLENE ROBERTS-CAUDLE/ATTY. FOR PL.
RESPONSIVE PLEADING

No Ruling