



**UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Department B – Courtroom #13
Fresno, California
Hearing Date: Wednesday, May 1, 2024**

Unless otherwise ordered, all matters before the Honorable René Lastreto II, shall be simultaneously: (1) **In Person** at, 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 or stated below.

All parties or their attorneys who wish to appear at a hearing remotely must sign up by **4:00 p.m. one business day** prior to the hearing. Information regarding how to sign up can be found on the **Remote Appearances** page of our website at <https://www.caeb.uscourts.gov/Calendar/RemoteAppearances>. Each party/attorney who has signed up will receive a Zoom link or phone number, meeting I.D., and password via e-mail.

If the deadline to sign up has passed, parties and their attorneys who wish to appear remotely must contact the Courtroom Deputy for the Department holding the hearing.

Please also note the following:

- Parties in interest and/or their attorneys may connect to the video or audio feed free of charge and should select which method they will use to appear when signing up.
- Members of the public and the press who wish to attend by ZoomGov may only listen in to the hearing using the Zoom telephone number. Video participation or observing are not permitted.
- Members of the public and the press may not listen in to trials or evidentiary hearings, though they may attend in person unless otherwise ordered.

To appear remotely for law and motion or status conference proceedings, you must comply with the following guidelines and procedures:

1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
2. Parties appearing via CourtCall are encouraged to review the [CourtCall Appearance Information](#). If you are appearing by ZoomGov phone or video, please join at least 10 minutes prior to the start of the calendar and wait with your microphone muted until the matter is called.

Unauthorized Recording is Prohibited: Any recording of a court proceeding held by video or teleconference, including "screen shots" or other audio or visual copying of a hearing is prohibited. Violation may result in sanctions, including removal of court-issued media credentials, denial of entry to future hearings, or any other sanctions deemed necessary by the court. For more information on photographing, recording, or broadcasting Judicial Proceedings, please refer to Local Rule 173(a) of the United States District Court for the Eastern District of California.

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. [23-12271](#)-B-13 **IN RE: RODNEY TIMMONS**
[LGT-1](#)

CONTINUED MOTION TO DISMISS CASE
1-9-2024 [[61](#)]

LILIAN TSANG/MV
ADELE SCHNEIDEREIT/ATTY. FOR DBT.
LILIAN TSANG/ATTY. FOR MV.

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

DISPOSITION: Continued to May 15, 2024, at 9:30 a.m.

ORDER: The court will prepare the order.

The Chapter 13 Trustee moves to dismiss this case for cause on the following grounds:

1. Unreasonable delay by the debtor that is prejudicial to creditors.
2. Failure to confirm a Chapter 13 Plan.
3. Debtor has failed to make payments due under the plan. As of January 09, 2024, payments are delinquent in the amount of \$1,096.00. While this motion has been pending, further payments will come due. In addition to the delinquency amount, Debtor must also make monthly plan payments of \$806.00 commencing on January 25, 2024.

Doc. #61. On April 10, 2024, Rodney Timmons ("Debtor") filed his Second Amended Plan, which is set for a confirmation hearing on May 15, 2024, at 9:30 a.m. Accordingly, this matter will be CONTINUED to May 15, 2024, at 9:30 a.m. to be heard in conjunction with the confirmation hearing.

2. [19-11973](#)-B-13 **IN RE: JOSE GONZALEZ**
[EAT-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-29-2024 [\[44\]](#)

LAKEVIEW LOAN SERVICING,
LLC/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
CASSANDRA RICHEY/ATTY. FOR MV.

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

DISPOSITION: Granted.

ORDER: The Movant will prepare the order.

Lakeview Loan Servicing, LLC ("Movant") moves for an order lifting the automatic stay for the limited purpose of allowing a state court action to cure a title issue as to Debtor's real property commonly known as 670 N. Laverne Ave., Fresno, California 93727-6819 ("the Property") owned by Jose Gonzalez ("Debtor"). Doc. #44. Specifically, Movant seeks to resolve an issue with the chain of title arising from an unsatisfied lien which should have been released at the close of escrow when Debtor refinanced the Property in 2016. Docs. ##44,47. Movant characterizes the action as a purely administrative action but one which is subject to a statute of limitations upon discovery that is tolled by the bankruptcy case. *Id.* Movant avers that the entity (who is not named in the motion) which purportedly holds the unsatisfied lien has ceased business operations, and thus a state court action is needed to clarify any title issues and amend the chain of title as necessary. *Id.* Movant asserts that it has "cause" to seek relief from the automatic stay as Debtor's case will soon complete, thus terminating the automatic stay and ending the tolling of the statute of limitations. *Id.*

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Thus, pursuant to LBR 9014-1(f)(1)(B), the failure of any party in interest (including but not limited to creditors, the debtor, the U.S. Trustee, or any other properly-served party in interest) to file written opposition at least 14 days prior to the hearing may be deemed a waiver of any such opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). When there is no opposition to a motion, the defaults of all parties in interest who failed to timely respond will be entered, and, in the absence of any opposition, the movant's 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). Because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary when an unopposed movant has made a prima facie case for the requested relief. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006).

No party in interest timely filed written opposition. This motion will be GRANTED.

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).

After review of the included evidence, the court finds that "cause" exists to lift the stay because the Movant only seeks to lift the stay to allow a state court proceeding to resolve an issue with the chain of title. Movant avers that this action will have no effect on the administration of the estate or of Debtor's relationship with the Property. The Movant has produced evidence that the title curative action is necessary during the pendency of the Debtor's bankruptcy because the statute of limitations will begin to run once Debtor completes his bankruptcy, to the prejudice of Movant.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit Movant to proceed with its state court action to cure title in the California State Court. 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 Rule 4001(a)(3) will be ordered waived because Movant wishes to resolve the title issues before the relevant Statute of Limitations begins to run once more.

11:00 AM

1. [23-11332](#)-B-11 **IN RE: TWILIGHT HAVEN, A CALIFORNIA
NON-PROFIT CORPORATION**
[23-1037](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: NOTICE OF REMOVAL
9-18-2023 [[1](#)]

CASTELLANOS V. TWILIGHT HAVEN
MEGHAN HIGDAY/ATTY. FOR PL.

NO RULING.

2. [18-11651](#)-B-11 **IN RE: GREGORY TE VELDE**
[19-1033](#) [WJH-3](#)

MOTION TO COMPEL AND/OR MOTION FOR SANCTIONS
4-3-2024 [[715](#)]

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part.

ORDER: Order to be prepared by counsel for Plaintiff
and approved as to form by Defendants'
counsel.

Plaintiff Randy Sugarman ("Plaintiff" or "Movant") asks the court to issue an order compelling Defendants IRZ and Lindsay Corporation (collectively "IRZ") to compel further responses and document production concerning Movants December 2023 request for production of documents under Civ. Rule 34 (Fed. R. Bankr. Proc. 7034). Movant also seeks sanctions of \$8297.50.

For the below reasons, the court orders further production and/or privilege log(s) as appropriate and awards less compensatory attorneys' fees than requested.

Movant served one set of Request for Production of Documents ("RFP's") on IRZ and Lindsay on or about December 22, 2023. After IRZ requested and received extensions to respond, Movant unilaterally sent an email claiming any production must be without objection. After further extension was granted, IRZ produced documents (about 300) "online" from Lindsay but no further documents from IRZ in late February 2024, about one month after they were due.

An email exchange ensued. Movant claimed the document production was insufficient and it was too late for objections. Movant stated

this motion would follow. IRZ's counsel asked Movant to specify what documents were missing. A short exchange followed, but no resolution was reached.

This motion followed. It was withdrawn by Movant for procedural reasons, then re-filed. The re-filed motion is before the court now.

Movant argues IRZ waived all objections by submitting an untimely and unverified response. Movant further contends that a privilege log should have been produced if documents were withheld on privilege grounds. In addition, movant claims IRZ's response suggests there may be responsive documents which are not being produced and that Movant is entitled to them since the objections were waived. Finally, Movant asserts adequate "meet and confer" procedures were followed, and that Movant is entitled to compensatory sanctions.

IRZ claims the withheld documents are protected by attorney-client privilege and need not be produced under controlling Ninth Circuit law. IRZ also contends that until the motion was filed, IRZ had no idea a "bone of contention" was the way in which the Lindsay documents were produced, and that Movant engaged in no "meet and confer efforts" on that issue. IRZ then argues that sanctions are not appropriate because it acted with substantial justification since it asked for clarification from Movant as to the deficiency of the production and that there was an inadequate "meet and confer" process engaged before the motion was filed.

Movant filed a reply which essentially repeats their initial arguments though Movant does point out that before the response to the motion, it was unclear that if documents were withheld by IRZ, it was because they were allegedly protected by the attorney-client privilege.

Based on the facts before the court, it appears the attorney-client privilege was preserved as to protected documents, but IRZ has not properly permitted either Movant or the court to assess the privilege claims since no log was produced as required by Civ. Rule 26 (b) (5) (Fed. R. Bankr. Proc. 7026). Plus, Movant has pushed the waiver claims too far considering the circumstances here and applicable law.

Both parties seem to agree that there is no per se waiver rule when a privilege log is not timely produced. *Burlington Northern & Santa Fe Ry. Co. v. U.S. District Court*, 408 F. 3d 1142, 1149 (9th Cir. 2005). Rather the court must conduct a case-by-case waiver determination that evaluates various factors "in the context of a holistic reasonableness analysis." *Id.* Movant properly outlines the factors that guide the analysis in its opening brief.

IRZ's objections on generic grounds set forth in their response to the production does not give the court or Movant much to evaluate the propriety of the privilege claim. Boilerplate objections are "presumptively insufficient." *Id.* IRZ's objections were largely boilerplate though IRZ did claim they would produce (or had

produced) responsive documents. IRZ also referenced by Bates Stamp numbers of documents previously produced responsive to some of Movant's requests.

IRZ's objections were timely. It is a close call, but Movant did provide numerous professional courtesies in extending the deadlines to respond. It was in February when Movant unilaterally stated in an email that objections were waived. There was no suggestion of an agreement to this or that this was the subject of a "meet and confer" procedure. So, it appears to the court that the objections were timely considering the extensions. That does not excuse a lack of a privilege log, however.

The magnitude of the document production seems manageable. There were fourteen (14) requests to IRZ; sixteen (16) to Lindsay. True enough, IRZ may have already produced 25,000 documents, but there is nothing suggesting, for example, the reason the time records of certain professionals on the project, are being withheld. So, the reason they are not produced is still unclear.

This is a complex construction dispute that is in litigation. Documents are likely numerous, and in many cases repetitive. But neither Movant nor IRZ have provided the court with any facts suggesting responding to the requests or the need for the document requests is particularly or unusually easy or hard.

Movant's reliance on *Richmark v. Timber Falling Consultants*, 959 F. 2d 1468 (9th Cir., 1992) pushes the claim that IRZ was untimely and therefore waived all objections, too far. In *Richmark*, the District Court issued an order compelling responses, then granted a motion for contempt but denied awarding monetary sanctions, and then issued a third order for responses to the discovery requests be provided. That is not close to the procedural posture here.

Moreover, *Richmark* cited *Davis v. Fendler*, 650 F. 2d 1151, 1160 (9th Cir. 1981) and an applicable Local Rule on the timing issue. In *Davis*, fifteen (15) months passed before interrogatory responses were given containing objections. In fact, the court in *Richmark* noted that the recalcitrant party could have raised the issue of compliance with the document request by objecting to the discovery request "or at the very least in response to a motion to compel." *Richmark* at pg. 1473.

On balance, then, IRZ did respond to the document requests unlike the parties in *Davis* or *Richmark*. So, in this matter the court does not find the attorney client privilege waived.

That said, there is no excuse at this time for IRZ not providing a privilege log or clarifying what may be reasonably considered at best ambiguous and at worst obfuscatory responses.

The court agrees with Movant that clarification in many cases is required as is a privilege log. The court makes the following orders under Civ. Rule 26 (e) (1) (B):

As to the RFP's directed to IRZ:

Categories 1, 2, 3, 9, 10 - IRZ to clarify its responses to state whether there are responsive documents. If so, those documents are to be produced. If not, respond accordingly. If any documents are withheld an adequate privilege log is to be provided.

Categories 4-8 - If any documents are withheld, an adequate privilege log is to be provided.

Categories 11-14 - Additional responsive documents are to be produced. If any are withheld, an adequate privilege log is to be provided.

As to RFP's directed to Lindsay:

Categories 1, 2, 6, 9-15 - Clarify whether there are responsive documents. If so, produce them. If any are withheld, an adequate privilege log is to be provided.

Categories 3-5, 7-8 - If documents are withheld an adequate privilege log is to be provided.

Category 16 - No further documents compelled to be produced.

Further responses, document production, and privilege log(s) are to be produced to Plaintiff's counsel within 14 days of entry of the order on this motion.

As to compensatory sanctions, the court has considered both parties arguments. The court is not convinced a compensatory award in the amount requested by movant is appropriate here. One reason is that the record is unclear the extent of "meet and confer" efforts that were made beyond some emails that are part of the motion. There were apparently phone calls following up on the emails, but no evidence about any agreements that may have occurred is in the record.

Also, though Movant requested and IRZ provided verifications for the responses to document requests, that seemed unnecessary since verified responses are not required under Civ. Rule 34.

Further, though the court appreciates the time that counsel for both parties spent in dealing with this motion, it does seem that this motion may have been completely unnecessary if an adequate privilege log had been provided by IRZ and some clear understanding concerning preservation of objections had been reached between two well represented parties.

At the same time, IRZ's emails in February 2024 suggest that even after the due date in late January, IRZ was still reviewing the documents for responsive items. There was no evidence why the review was difficult, especially when, as IRZ suggests, there were over 25,000 documents produced previously. If there was an explanation, it is absent from the record. For all the court knows

the delays were due to IRZ's counsel's computer issues or staffing shortages on extended due dates.

Also, the court is unconvinced that IRZ had "substantial justification" for not producing a privilege log or something other than largely boilerplate responses after numerous extensions for responses were given. The court has been provided no reason or circumstance why a sanction award is unjust, here. Both counsels are sophisticated and have considered the cost/benefit of bringing and opposing this motion.

Given these issues the court will reduce the compensatory sanction award request by slightly more than 50%. IRZ, Lindsay, and their counsel are jointly and severally ordered to pay \$4,000.00 compensatory fees to counsel for Movant. Payment to be made 14 days after entry of the order on this motion.

Order to be prepared by Movant's counsel and approved as to form only by counsel for IRZ and Lindsay.

3. [18-11651](#)-B-11 **IN RE: GREGORY TE VELDE**
[23-1012](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
2-9-2023 [[1](#)]

SUGARMAN V. UNITED STATES
TRUSTEE PROGRAM, BY AND
RILEY WALTER/ATTY. FOR PL.
CONT'D TO 7/17/24 PER ECF ORDER #21

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

DISPOSITION: Continued to July 17, 2024, at 11:00 a.m.

No order is required.

Pursuant to the court's Order Granting Stipulation (Doc. #21), this matter is CONTINUED to July 17, 2024, at 11:00 a.m.

4. [23-12794](#)-B-7 **IN RE: TRAVIS DAVIS**
[24-1002](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
3-1-2024 [[1](#)]

DAVIS V. UNITED STATES
DEPARTMENT OF EDUCATION ET AL
JEFFREY ROWE/ATTY. FOR PL.

NO RULING.