

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday May 26, 2022
Place: Department A – Courtroom #11
Fresno, California

Beginning the week of June 28, 2021, and in accordance with District Court General Order No. 631, the court resumed in-person courtroom proceedings in Fresno. Parties to a case may still appear by telephone, provided they comply with the court's telephonic appearance procedures, which can be found on the court's website.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

THE COURT ENDEAVORS TO PUBLISH ITS RULINGS AS SOON AS POSSIBLE. HOWEVER, CALENDAR PREPARATION IS ONGOING AND THESE RULINGS MAY BE REVISED OR UPDATED AT ANY TIME PRIOR TO 4:00 P.M. THE DAY BEFORE THE SCHEDULED HEARINGS. PLEASE CHECK AT THAT TIME FOR POSSIBLE UPDATES.

1. [20-11913](#)-A-13 **IN RE: DURANT/NICOLE OLIVER**
[RSW-1](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH
MID-CENTURY INSURANCE COMPANY
4-19-2022 [\[41\]](#)

DURANT OLIVER/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance
with the ruling below.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Durant Jason Oliver and Nicole Lee Oliver (together, "Debtors"), the chapter 13 debtors, move the court for an order pursuant to Federal Rule of Bankruptcy Procedure 9019, approving the compromise of all claims and disputes between joint debtor Nicole Lee Oliver and Mid-Century Insurance Company arising out of a personal injury lawsuit filed in Clark County District Court, Case No. A-20-818685. Doc. #43.

Pre-petition, in September 2018, joint debtor Nicole Lee Oliver ("Joint Debtor") was involved in a motor vehicle accident in Henderson, Nevada, and sustained personal injuries. Decl. of Nicole Oliver, Doc. #43. Joint Debtor contacted an attorney and filed a lawsuit for personal injuries against the other driver in Clark County District Court in July 2020. Id. Joint Debtor has reached an agreement to settle the case for a gross amount of \$250,000, with Joint Debtor to receive \$78,000 after payment of costs and attorney's fees. Id. Joint Debtor believes it is a fair and just settlement. Id.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. Martin v. Kane (In re A & C Props.), 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense,

inconvenience, and delay necessarily attending it; and (4) the paramount interest of the creditors with a proper deference to their reasonable views. Woodson v. Fireman's Fund Ins. Co. (In re Woodson), 839 F.2d 610, 620 (9th Cir. 1988).

It appears from the moving papers that Debtors have considered the standards of A & C Properties and Woodson. Doc. #43. The proposed settlement allows for payment of \$78,000 to Joint Debtor. Debtors have fully exempted the personal injury settlement pursuant to California Code of Civil Procedure § 704.140. Am. Schedule C, Doc. #39. Debtors believe that the settlement is fair, reasonable, and obtains an economically advantageous result. Doc. #43. The court concludes that the Woodson factors balance in favor of approving the compromise, and the compromise is in the best interests of the creditors and the estate.

Accordingly, it appears that the compromise pursuant to Federal Rule of Bankruptcy Procedure 9019 is reasonable. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). No opposition has been filed. Furthermore, the law favors compromise and not litigation for its own sake. Id.

Accordingly, the motion is GRANTED, and the settlement between Joint Debtor and Mid-Century Insurance Company is approved. Debtors are authorized, but not required, to execute any and all documents necessary to satisfy the terms of the proposed settlement agreement.

2. [21-12815](#)-A-13 **IN RE: GUADALUPE SUAREZ**
[MHM-1](#)

CONTINUED MOTION TO DISMISS CASE
3-28-2022 [\[18\]](#)

MICHAEL MEYER/MV
JOEL WINTER/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 to dismiss on May 16, 2022. Doc. #39.

3. [21-10856](#)-A-13 **IN RE: MARK/AMELIA CAVE**
[SL-4](#)

MOTION TO MODIFY PLAN
4-12-2022 [\[68\]](#)

MARK CAVE/MV
SCOTT LYONS/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). On May 10, 2022, the chapter 13 trustee filed written opposition to plan confirmation. Doc. #78. 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). Therefore, the defaults of the nonresponding parties in interest are entered. Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has not done here.

On April 11, 2022, Mark David Cave and Amelia Ann Cave (together, "Debtors") filed and served this motion to confirm the first modified chapter 13 plan and set the motion for hearing on May 26, 2022. Doc. ##65-73. The proposed plan seeks to extend the duration of payments to 84 months pursuant to the CARES Act. Plan, Doc. #65. However, the CARES Act amendments to 11 U.S.C. § 1329 that allowed for an extension of plan duration of up to 84 months ceased to be effective on March 27, 2022, and § 1329 has reverted to the pre-CARES Act language limiting plan modification to 60 months. See CARES Act Pub L. No. 116-136 § 1113(b); 11 U.S.C. § 1329. The plan cannot be confirmed because the plan duration of 84 months exceeds the five-year period set forth in 11 U.S.C. § 1329(c) (effective March 27, 2022).

Accordingly, Debtors' motion to confirm the first modified chapter 13 plan will be DENIED.

MOTION FOR COMPENSATION FOR SCOTT LYONS, DEBTORS ATTORNEY(S)
4-12-2022 [\[74\]](#)

SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Scott Lyons, Attorney at Law ("Movant"), counsel for Mark David Cave and Amelia Ann Cave (together, "Debtors"), the debtors in this chapter 13 case, requests interim allowance of compensation and reimbursement for expenses in the amount of \$15,877.24 for services rendered from August 9, 2021 through April 11, 2022. Doc. #74. Debtors' confirmed plan provides for \$58,000.00 in attorney's fees to be paid through the plan. Plan, Doc. #47, 34. One prior fee application has been approved authorizing interim compensation and reimbursement of expenses of \$17,673.15. Doc. #55. Debtors consent to the amount requested in Movant's application. Doc. #74.

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 13 case. 11 U.S.C. § 330(a)(1), (4)(B). The court may allow reasonable compensation to the chapter 13 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 and prosecuting Debtors' first modified plan; (2) preparing and filing proof of claim for business property; (3) communicating with Debtors' creditors and the chapter 13 trustee; (4) preparing the fee application; and (5) general case administration. Exs. A & B, Doc. #76. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion.

This motion is GRANTED. The court allows on an interim basis compensation and reimbursement for expenses in the amount of \$15,877.24 to be paid in a manner consistent with the terms of the confirmed plan.

5. [19-10558](#)-A-13 **IN RE: GWENDOLYN BROWN**
[LCH-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-20-2022 [\[89\]](#)

LAURA PATRICIO/MV
GABRIEL WADDELL/ATTY. FOR DBT.
LORI HERSHORIN/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 the hearing.

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.

The movants, Laura Alicia Patricio and Abel Patricio Cota (together "Movants"), seek relief from the automatic stay under 11 U.S.C. § 362(d)(2) with respect to a quiet title action pending in Kings County Superior Court, Case No. 21C-0121 (the "Quiet Title Action") concerning real property located 756 Pickerell Avenue, Corcoran, CA 93212 (the "Property"). Doc. #89.

Gwendolyn J. Brown ("Debtor"), the chapter 13 debtor, scheduled a 25% interest in the Property obtained through an inheritance upon the death of Debtor's mother in 2018. Am. Schedule A/B, Doc. #55. Bank of the West foreclosed on the Property by trustee sale in April 2019. Decl. of Lori C. Hershorin, Doc. #95. Movants purchased the Property from Bank of the West and obtained a grant deed on July 25, 2019. Id. Movants initiated the Quiet Title Action seeking to quiet title to the Property. Id. Movants, Debtor, and the chapter 13 trustee have stipulated to terminate the automatic stay to permit Movants to proceed with the Quiet Title Action. Stipulation, Doc. #94.

Bankruptcy Code § 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 automatic stay. The Property is not necessary to the successful completion of Debtor's confirmed chapter 13 plan. See Plan, Doc. #53; Order, Doc. #77. Debtor and the chapter 13 trustee have agreed to stipulate to the termination of the automatic stay to permit the Quiet Title Action to proceed.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit Movants to proceed in the Quiet Title Action. No other relief is awarded.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because Movants, Debtor, and the chapter 13 trustee stipulated to terminate the automatic stay with respect to the Quiet Title Action.

6. [21-12272](#)-A-13 **IN RE: AMANDA MANUEL**
[JNV-3](#)

CONTINUED MOTION TO CONFIRM PLAN
3-10-2022 [\[35\]](#)

AMANDA MANUEL/MV
JASON VOGELPOHL/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

Amanda Manuel ("Debtor") filed and served this motion to confirm the second amended chapter 13 plan pursuant to Local Rule of Practice ("LBR") 3015-1(d)(1) and set for hearing on April 21, 2022. Doc. ##35-42. The chapter 13 trustee ("Trustee") filed an opposition to Debtor's motion. Doc. #43. The court continued this matter to May 26, 2022 and ordered Debtor to file and serve a written response to Trustee's objection by May 5, 2022; or if Debtor elected to withdraw this plan, then Debtor had to file, serve, and set for hearing a confirmable modified plan by May 12, 2022. Order, Doc. #46.

Having reviewed the docket in this case, the court finds Debtor has not voluntarily converted this case to Chapter 7 or dismissed this case, and Trustee's objection has not been withdrawn. Further, Debtor has not filed and served any written response to Trustee's objection. Debtor has not filed, served, and set for hearing a confirmable modified plan by the time set by the court.

Accordingly, Debtor's motion to confirm their second amended Chapter 13 plan is DENIED on the grounds set forth in Trustee's opposition.

MOTION TO COMPEL DISCOVERY AND OTHER RELIEF
5-5-2022 [\[370\]](#)

MICHAEL MEYER/MV
STEVEN ALTMAN/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part and denied in part.

ORDER: The minutes of the hearing will be the courts findings
and conclusions. The Moving Party shall submit a proposed
order after the hearing.

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. Though not required, the debtor filed written opposition on May 16, 2022. Doc. ##380, 381. The court will issue an order if a further hearing is necessary.

The chapter 13 trustee ("Trustee") and creditor T2M Investments LLC ("T2M") (collectively, "Movants") jointly move the court for an order compelling the debtor Sylvia Nicole ("Debtor") to answer interrogatories and produce documents, as well as for sanctions and fees. Doc. #370. Movants move under Federal Rule of Civil Procedure ("Rule") 37 and Rule 36, made applicable to this contested matter through Federal Rules of Bankruptcy Procedure 9014(c), 7037, and 7036.

Debtor's response filed on May 16, 2022 attempts to withdraw Debtor's Schedule C filed on January 7, 2022, which Debtor believes would render Movants' objections to Debtor's claim of exemption, and the related discovery dispute, moot. Doc. #380. This is incorrect. Pursuant to this court's order issued on January 13, 2022, Debtor is prohibited from filing an amended Schedule C without prior leave of this court until after the objections to exemptions claimed in Debtor's fifth amended Schedule C (Doc. #304) have been finally resolved on the merits. Order, Doc. #311. Therefore, Debtor's Schedule C filed on January 7, 2022 is not withdrawn, and Debtor's response does not resolve, or address, the issues presently raised by Movants.

The court is inclined to GRANT IN PART Movants' motion and issue an order compelling Debtor to respond to the discovery requests. To the extent Movants request the court issue an order deeming the First Set of Requests for Admissions admitted, the court will DENY that request. To the extent Movants request the court issue an order prohibiting Debtor from introducing evidence, the court will DENY that request. Because the court is GRANTING IN PART and DENYING IN PART Movants' motion, Rule 37(a)(5)(C) gives the court discretion in apportioning reasonable expenses incurred in prosecuting discovery motions. With respect to the reasonable expenses, the court is inclined to GRANT Movants' request for attorney's fees in the full amount of \$2,400.

Debtor filed an amended Schedule C on January 7, 2022. Doc. #304. Trustee and T2M separately filed objections to Debtor's claimed homestead exemption. See Doc. ##320, 323. The court determined that an evidentiary hearing is needed to resolve the objections to Debtor's claimed homestead exemption and consolidated

Movants' objections. Order, Doc. #342. Pursuant to the Scheduling Order, fact discovery was to be completed no later than May 12, 2022. Doc. #342.

Movants propounded joint discovery directed to Debtor. Decl. of Steven Altman, Doc. #372. The discovery consisted of a First Set of Requests for Production ("Requests for Production") and a First Set of Requests for Admission ("Requests for Admissions"). Id. The Requests for Production and Requests for Admission were served on Debtor by mail on March 16, 2022. Id. Debtor failed to answer or otherwise respond within 30 days of being served as required by Rule 34(b) and Rule 36(a)(3). Id. On April 19, 2022, Movants sent a "meet and confer" discovery letter to Debtor advising Debtor of her failure to respond to the discovery requests, asking Debtor to respond within 72 hours. Id. The discovery letter was supplemented by an email to Debtor sent on April 21, 2022, again advising Debtor of her failure to respond to the discovery requests and requesting a response by noon on April 22, 2022. Id. A second email was sent that same day with a duplicate copy of the discovery letter sent on April 19, 2022. Id. Debtor failed to respond to any of the attempted communications. Id. On April 22, 2022, Movants attempted to contact Debtor by phone, but both numbers were "not operative." Id. A third email was sent to Debtor advising Debtor of the discovery defaults and stated that a formal discovery motion would be filed if no response was received by noon on April 25, 2022. Id. Debtor never responded, and Movants filed the instant motion. Id.

Steven Altman, counsel for T2M, testifies that his standard rate for legal services is \$300 per hour plus costs. Doc. #372. Mr. Altman testifies that the expenses incurred in making this discovery motion include: (a) 1.3 hours on preliminary research and review of discovery law; (b) 4.7 hours on drafting the motion, memorandum of points and authorities, declaration, and compiling exhibits; (c) 1.4 hours on drafting the meet and confer discovery letter, emails, and attempted phone communication; and (d) 1 hour spent finally reviewing the discovery motion and service of process. Doc. #372. For the eight hours spent in connection with the instant discovery motion, Mr. Altman requests reimbursement in the sum of \$2,400. Id.

"On notice to other parties and all affected persons, a party may move for an order compelling disclosure or discovery." Rule 37(a)(1). A party seeking discovery may move for an order compelling an answer, designation, production or inspection if a party fails to comply with the discovery request. Rule 37(a)(3)(B). The moving party must certify its attempt to confer with the person failing to respond prior to moving for an order compelling discovery, which Movants have done here. Doc. #372; Rule 37(a)(1).

Rule 36 governs requests for admissions. A matter is deemed admitted unless the responding party answers or objects to the request within 30 days after being served. Fed. R. Civ. P. 36(a)(3). If a matter is not admitted, the answer must specifically deny [the matter] or state in detail why the answering party cannot truthfully admit or deny it." Fed. R. Civ. P. 36(a)(4). "A party requesting an admission may, if he feels these requirements have not been met, move . . . to compel a proper response, or to have the matter ordered admitted." Asea, Inc. v. S. Pac. Transp. Co., 669 F.2d 1242, 1247 (9th Cir. 1981). The court should order an answer be submitted before deeming the matter admitted, but this determination is left to the sound discretion of the judge. Id.

When the court grants in part and denies in part a motion to compel discovery, Rule 37(a) permits the court to apportion the reasonable expenses for the motion to the party whose conduct necessitated the motion. Rule 37(a)(5)(C).

"The party seeking the award of fees must submit evidence to support the number of hours worked and the rates claimed." Global Ampersand, LLC v. Crown Eng'g & Constr., 261 F.R.D. 495, 502 (E.D. Cal 2009). The court should exclude from the amount hours that are not reasonably expended, i.e., hours that are excessive, redundant, or otherwise unnecessary. Id.

Here, Movants have submitted evidence demonstrating that the number of hours worked and the rates claimed in working to obtain discovery from Debtor are reasonable, and the court will award attorney's fees against Debtor payable to Law Offices of Steven Altman PC. Because Debtor has not responded in any manner to Movants' repeated attempts to confer regarding discovery and did not meaningfully respond to the discovery motion, the court will award attorney's fees of \$2,400.

Movants' motion for an order compelling answers to the Requests for Admissions and responses to the Requests for Production is GRANTED.

By no later than the fourteenth (14th) day after the entry of the order granting this motion, Debtor shall provide responses to Movants' Requests for Production and Requests for Admissions in compliance with the Federal Rules of Civil Procedure. Failure to answer the Requests for Admissions and Requests for Production may result in an order deeming each of the enumerated matters admitted, prohibiting Debtor from introducing evidence opposing Movants' objections to Debtor's homestead exemption, and further sanctions as this court deems appropriate under Rule 37(b).

8. [21-10679](#)-A-13 **IN RE: SYLVIA NICOLE**
[SSA-6](#)

MOTION TO COMPEL DISCOVERY AND OTHER RELIEF
5-5-2022 [[370](#)]

MICHAEL MEYER/MV
STEVEN ALTMAN/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part and denied in part.

ORDER: The minutes of the hearing will be the courts findings and conclusions. The Moving Party shall submit a proposed order after the hearing.

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. Though not required, the debtor filed written opposition on May 16, 2022. Doc. ##380, 381. The court will issue an order if a further hearing is necessary.

The chapter 13 trustee ("Trustee") and creditor T2M Investments LLC ("T2M") (collectively, "Movants") jointly move the court for an order compelling the debtor Sylvia Nicole ("Debtor") to answer interrogatories and produce documents, as well as for sanctions and fees. Doc. #370. Movants move under Federal Rule of Civil Procedure ("Rule") 37 and Rule 36, made applicable to this contested matter through Federal Rules of Bankruptcy Procedure 9014(c), 7037, and 7036.

Debtor's response filed on May 16, 2022 attempts to withdraw Debtor's Schedule C filed on January 7, 2022, which Debtor believes would render Movants' objections to Debtor's claim of exemption, and the related discovery dispute, moot. Doc. #380. This is incorrect. Pursuant to this court's order issued on January 13, 2022, Debtor is prohibited from filing an amended Schedule C without prior leave of this court until after the objections to exemptions claimed in Debtor's fifth amended Schedule C (Doc. #304) have been finally resolved on the merits. Order, Doc. #311. Therefore, Debtor's Schedule C filed on January 7, 2022 is not withdrawn, and Debtor's response does not resolve, or address, the issues presently raised by Movants.

The court is inclined to GRANT IN PART Movants' motion and issue an order compelling Debtor to respond to the discovery requests. To the extent Movants request the court issue an order deeming the First Set of Requests for Admissions admitted, the court will DENY that request. To the extent Movants request the court issue an order prohibiting Debtor from introducing evidence, the court will DENY that request. Because the court is GRANTING IN PART and DENYING IN PART Movants' motion, Rule 37(a)(5)(C) gives the court discretion in apportioning reasonable expenses incurred in prosecuting discovery motions. With respect to the reasonable expenses, the court is inclined to GRANT Movants' request for attorney's fees in the full amount of \$2,400.

Debtor filed an amended Schedule C on January 7, 2022. Doc. #304. Trustee and T2M separately filed objections to Debtor's claimed homestead exemption. See Doc. ##320, 323. The court determined that an evidentiary hearing is needed to resolve the objections to Debtor's claimed homestead exemption and consolidated Movants' objections. Order, Doc. #342. Pursuant to the Scheduling Order, fact discovery was to be completed no later than May 12, 2022. Doc. #342.

Movants propounded joint discovery directed to Debtor. Decl. of Steven Altman, Doc. #372. The discovery consisted of a First Set of Requests for Production ("Requests for Production") and a First Set of Requests for Admission ("Requests for Admissions"). Id. The Requests for Production and Requests for Admission were served on Debtor by mail on March 16, 2022. Id. Debtor failed to answer or otherwise respond within 30 days of being served as required by Rule 34(b) and Rule 36(a)(3). Id. On April 19, 2022, Movants sent a "meet and confer" discovery letter to Debtor advising Debtor of her failure to respond to the discovery requests, asking Debtor to respond within 72 hours. Id. The discovery letter was supplemented by an email to Debtor sent on April 21, 2022, again advising Debtor of her failure to respond to the discovery requests and requesting a response by noon on April 22, 2022. Id. A second email was sent that same day with a duplicate copy of the discovery letter sent on April 19, 2022. Id. Debtor failed to respond to any of the attempted communications. Id. On April 22, 2022, Movants attempted to contact Debtor by phone, but both numbers were "not operative." Id. A third email was sent to Debtor advising Debtor of the discovery defaults and stated that a formal discovery motion would be filed if no response was received by noon on April 25, 2022. Id. Debtor never responded, and Movants filed the instant motion. Id.

Steven Altman, counsel for T2M, testifies that his standard rate for legal services is \$300 per hour plus costs. Doc. #372. Mr. Altman testifies that the expenses incurred in making this discovery motion include: (a) 1.3 hours on preliminary research and review of discovery law; (b) 4.7 hours on drafting the motion, memorandum of points and authorities, declaration, and compiling exhibits; (c) 1.4 hours on drafting the meet and confer discovery letter, emails, and attempted phone communication; and (d) 1 hour spent finally reviewing the discovery motion and service of process. Doc. #372. For the eight hours spent in connection with the instant discovery motion, Mr. Altman requests reimbursement in the sum of \$2,400. Id.

"On notice to other parties and all affected persons, a party may move for an order compelling disclosure or discovery." Rule 37(a)(1). A party seeking discovery may move for an order compelling an answer, designation, production or inspection if a party fails to comply with the discovery request. Rule 37(a)(3)(B). The moving party must certify its attempt to confer with the person failing to respond prior to moving for an order compelling discovery, which Movants have done here. Doc. #372; Rule 37(a)(1).

Rule 36 governs requests for admissions. A matter is deemed admitted unless the responding party answers or objects to the request within 30 days after being served. Fed. R. Civ. P. 36(a)(3). If a matter is not admitted, the answer must specifically deny [the matter] or state in detail why the answering party cannot truthfully admit or deny it." Fed. R. Civ. P. 36(a)(4). "A party requesting an admission may, if he feels these requirements have not been met, move . . . to compel a proper response, or to have the matter ordered admitted." Asea, Inc. v. S. Pac. Transp. Co., 669 F.2d 1242, 1247 (9th Cir. 1981). The court should order an answer be submitted before deeming the matter admitted, but this determination is left to the sound discretion of the judge. Id.

When the court grants in part and denies in part a motion to compel discovery, Rule 37(a) permits the court to apportion the reasonable expenses for the motion to the party whose conduct necessitated the motion. Rule 37(a)(5)(C).

"The party seeking the award of fees must submit evidence to support the number of hours worked and the rates claimed." Global Ampersand, LLC v. Crown Eng'g & Constr., 261 F.R.D. 495, 502 (E.D. Cal 2009). The court should exclude from the amount hours that are not reasonably expended, i.e., hours that are excessive, redundant, or otherwise unnecessary. Id.

Here, Movants have submitted evidence demonstrating that the number of hours worked and the rates claimed in working to obtain discovery from Debtor are reasonable, and the court will award attorney's fees against Debtor payable to Law Offices of Steven Altman PC. Because Debtor has not responded in any manner to Movants' repeated attempts to confer regarding discovery and did not meaningfully respond to the discovery motion, the court will award attorney's fees of \$2,400.

Movants' motion for an order compelling answers to the Requests for Admissions and responses to the Requests for Production is GRANTED.

By no later than the fourteenth (14th) day after the entry of the order granting this motion, Debtor shall provide responses to Movants' Requests for Production and Requests for Admissions in compliance with the Federal Rules of Civil Procedure. Failure to answer the Requests for Admissions and Requests for Production may result in an order deeming each of the enumerated matters admitted, prohibiting Debtor from introducing evidence opposing Movants' objections to Debtor's homestead exemption, and further sanctions as this court deems appropriate under Rule 37(b).

1. [21-12729](#)-A-7 **IN RE: JOSE MESTRES**
[22-1006](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
1-20-2022 [[1](#)]

SCHOOLSFIRST FEDERAL CREDIT UNION V. MESTRES
PAUL REZA/ATTY. FOR PL.

NO RULING.

2. [19-13871](#)-A-7 **IN RE: JENNA LONG**
[22-1009](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
3-30-2022 [[1](#)]

LONG V. U.S. DEPARTMENT OF EDUCATION ET AL
NANCY KLEPAC/ATTY. FOR PL.

NO RULING.

3. [21-10679](#)-A-13 **IN RE: SYLVIA NICOLE**
[21-1015](#) [NS-16](#)

MOTION TO RECONSIDER, AND/OR MOTION TO SET ASIDE
4-18-2022 [[335](#)]

NICOLE V. T2M INVESTMENTS, LLC
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The defendant and counter-plaintiff timely filed written opposition on May 12, 2022. Doc. #341. This matter will proceed as scheduled.

As an initial matter, this court may take judicial notice of and consider the records, motions, and prior orders entered in this bankruptcy case. Fed. R. Evid. 201; Bank of Am., N.A. v. CD-04, Inc. (In re Owner Mgmt. Serv., LLC), 530 B.R. 711, 717 (Bankr. C.D. Cal. 2015). The court takes judicial notice of the existence of filed documents and prior court orders in this case, and the request for judicial notice submitted by T2M Investments LLC ("T2M") is granted.

Sylvia Nicole ("Nicole") is a chapter 13 debtor pro se and the plaintiff and counter-defendant in this adversary proceeding. On September 9, 2021, T2M filed a countercomplaint ("Counterclaim") against Nicole, GLVM a California corporation ("GLVM"), Tam Nguyen, Does 1 through 15, and all other persons unknown claiming and right, title, estate, lien, or interest in the properties described in the counterclaim (collectively, "Counter-Defendants"). Doc. #261. By the Counterclaim, T2M asserts five claims for relief against Counter-Defendants.

Prior to filing a responsive pleading, Nicole twice moved to dismiss the Counterclaim for failure to state a claim upon which relief can be granted pursuant to Federal Rule of Civil Procedure ("Rule") 12(b)(6). See Doc. #282; Doc. #297; Civil Minutes, Doc. #310; Order, Doc. #311; Order, Doc. #328. On March 11, 2022, the court entered an Order denying Nicole's motion to dismiss the Counterclaim. Doc. #311.

On March 14, 2022, Nicole filed an Ex Parte Application to Set Aside Default Judgment ("Application"). Doc. #327. The Application indicated that Nicole believed a default judgment had been entered against her and requested the court set aside the default judgment. However, no default judgment has been entered against Nicole, and Nicole was not in default.

The Application also stated that Nicole was unable to appear at the hearing in this adversary proceeding held March 10, 2022 at 11:00 a.m. because her telephonic appearance was mistakenly scheduled for the hearing at 9:30 a.m. In fact, there was a hearing in Nicole's chapter 13 bankruptcy case calendared for 9:30 a.m. on March 10, 2022, at which Nicole appeared. There also was a hearing in this adversary proceeding scheduled for 11:00 a.m. at which Nicole failed to appear. Nicole had two hearings scheduled the morning of March 10, 2022, and Nicole's failure to appear at the 11:00 a.m. calendar was not caused by any third party's scheduling mistakes.

Although Nicole was not in default and no default judgment against Nicole had been rendered, the court chose to construe the Application as a request to reconsider the denial of Nicole's Rule 12(b)(6) motion to dismiss the Counterclaim. Order, Doc. #328. Responding to the Application, the court denied Nicole's request to reconsider the motion to dismiss. Order, Doc. #328.

Nicole's instant motion to reconsider the denial of the motion to dismiss the Counterclaim raises the same arguments and facts as the Application, and those arguments have already been considered and dismissed by this court in the Order Denying Ex Parte Application to Set Aside Default Judgment ("Order"). Order, Doc. #328.

The court reiterates its prior decision contained in the Order and will not reconsider Nicole's motion to dismiss. In the first instance, "[a]n order denying a Rule 12(b)(6) motion is simply not appealable, as a general rule," and the court is unaware of any basis on which the court should reconsider the denial of Nicole's Rule 12(b)(6) motion. Broadway v. Norris, 193 F.3d 987, 989 (8th Cir. 1999). Secondly, Nicole sets forth no legal or factual argument as to why the court should reconsider the denial of Nicole's Rule 12(b)(6) motion to dismiss the Counterclaim.

Rule 60(b) encompasses a motion to reconsider filed in response to an order. Broadway, 193 F.3d at 989. Rule 60(b) "authorizes relief based on certain enumerated circumstances (for example, fraud, changed conditions, and the like). It is not a vehicle for simple re-argument on the merits." Id. at 990.

As explained in the court's civil minutes filed on March 10, 2022, and the Order issued on March 17, 2022, the court denied Nicole's Rule 12(b)(6) motion because the motion violated Rule 12(g)'s ban on repetitive, dilatory Rule 12(b) motions. Doc. #310; Doc. #328. Nothing has changed since March 10, 2022 that would warrant reconsideration of the court's denial of Nicole's Rule 12(b)(6) motion. Nicole does not point to any circumstances that would alter the court's reasoning.

Accordingly, this motion is DENIED.