UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

September 5, 2018 at 10:00 a.m.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. Matters resolved without oral argument:

Unless otherwise stated, the court will prepare a civil minute order on each matter listed. If the moving party wants a more specific order, it should submit a proposed amended order to the court. In the event a party wishes to submit such an Order it needs to be titled 'Amended Civil Minute Order.'

If the moving party has received a response or is aware of any reason, such as a settlement, that a response may not have been filed, the moving party must contact Nancy Williams, the Courtroom Deputy, at (916) 930-4580 at least one hour prior to the scheduled hearing.

2. The court will not continue any short cause evidentiary hearings scheduled below.

3. If a matter is denied or overruled without prejudice, the moving party may file a new motion or objection to claim with a new docket control number. The moving party may not simply re-notice the original motion.

4. If no disposition is set forth below, the matter will be heard as scheduled.

1.	15-26623-D-7 15-2227 MEYERS ET AL V. BURGESS	HOLLY BURGESS ELG-4	MOTION FOR THE ENFORCEMENT OF THE SETTLEMENT AGREEMENT AND/OR MOTION FOR ENTRY OF JUDGMENT 8-8-18 [80]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion for enforcement of the settlement agreement and/or motion for entry of judgment is supported by the record. As such the court will grant the motion by minute order. Moving party is to submit an appropriate form of judgment against defendant in the amount of $57,500. No appearance is necessary.

2. 12-33136-D-7 MKM-5 — GEORGE/IRENE ROSE — MOTION TO AVOID LIEN OF ACCURATE HEATING & COOLING 7-27-18 [50]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The court finds the judicial lien described in the motion impairs an exemption to which the debtors are entitled. As a result, the court will grant the debtors' motion to avoid the lien. Moving party is to submit an appropriate order, which order shall specifically identify the real property subject to the lien and specifically identify the lien to be avoided. No appearance is necessary.

3. 18-24143-D-7 JHW-1 — DARLENE THOMPSON — MOTION FOR RELIEF FROM AUTOMATIC STAY 7-31-18 [12]
SANTANDER CONSUMER USA, INC. VS.

Final ruling:

This matter is resolved without oral argument. This is Santander Consumer USA, Inc.'s motion for relief from automatic stay. The court records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and the property is not necessary for an effective reorganization. Accordingly, the court finds there is cause for granting relief from stay. The court will grant relief from stay by minute order. There will be no further relief afforded. No appearance is necessary.

4. 18-24044-D-7 WFZ-1 — EUGENE/ROBYN SMITH — MOTION FOR RELIEF FROM AUTOMATIC STAY 8-6-18 [19]
VANDERBILT MORTGAGE AND FINANCE, INC. VS.

Final ruling:

The matter is resolved without oral argument. This motion was noticed under LBR 9014-1(f)(2). However, the debtors' Statement of Intentions indicates they intend to surrender the collateral and the trustee has filed a Report of No Assets. Accordingly, the court finds a hearing is not necessary and will grant relief from stay by minute order. There will be no further relief afforded. No appearance is necessary.

5.	15-23746-D-7 MAS-1	GORDON BONES	CONTINUED MOTION FOR CHANGE OF VENUE FROM SOUTHERN DISTRICT OF INDIANA, AND/OR MOTION FOR RELIEF FROM AUTOMATIC STAY, MOTION FOR IMPOSITION OF 180 DAY BAR TO FILING ANY ADDITIONAL BANKRUPTCY CASE 6-7-18 [103]

Tentative ruling:

This is the motion of Melissa Joseph and Julie Ana DeSilva to change the venue of a chapter 13 case pending in the bankruptcy court for the Southern District of Indiana to this court, for relief from stay to permit a pending state court action to proceed, and for a 180-day bar to refiling by the debtor. The debtor in the Indiana case, who is also the debtor in this case, has filed opposition. For the following reasons, the motion will be granted. As discussed below, the debtor's request for dismissal of the motion to change venue will be denied. The debtor's request for a continuance, filed in connection with this motion, has been superseded by his separate motion to extend hearing date, also on this calendar, and is addressed in the court's ruling on that motion.

Although the debtor filed this case and the Indiana case in propria persona, he is and, for over 25 years, has been a practicing attorney. In fact, he has been active as a bankruptcy attorney in this district, filing 74 chapter 7 and chapter 13 cases between 2009 and the present, as counsel for the debtors. This information is helpful as a backdrop to his conduct discussed in this ruling.

The debtor contends the Indiana bankruptcy court, not this court, should decide the venue of the Indiana case. He cites 28 U.S.C. §§ 1404(a) and 1409 – the statutes governing, respectively, change of venue of civil actions (not specifically bankruptcy cases) and venue for the commencement of "arising under," "arising in," or "related to" proceedings in bankruptcy cases (again, not bankruptcy cases). As discussed below, the governing statute is 28 U.S.C. 1412, which the debtor does not mention. He also does not mention the rule that governs this motion, Fed. R. Bankr. P. 1014(b), which provides: "If petitions commencing cases under the Code . . . are filed in different districts by . . . the same debtor, . . . , the court in the district in which the first-filed petition is pending may determine, in the interest of justice or for the convenience of the parties, the district or districts in which any of the cases should proceed." Fed. R. Bankr. P. 1014(b). "The plain language of the rule provides that it is the court in the district where the first petition was filed that makes the determination on a 1014(b) motion." In re Reddington Inv. Ltd. Partnership-VIII, 90 B.R. 429, 430 (9th Cir. BAP 1988). The rule "provides for a 'bright line' test for determining the proper court to hear the change of venue motion. The result should not vary upon the particular facts surrounding each case, leaving the parties uncertain where to file the motion." Id. at 431. Because the debtor's 2015 case filed in this court was the first-filed case, this is the appropriate court to rule on the motion.[1]

The statute that governs the transfer of bankruptcy cases is 28 U.S.C. § 1412, which provides: "A district court may transfer a case or proceeding under title 11 to a district court for another district, in the interest of justice or for the convenience of the parties." The same test applies for successive cases filed by the same debtor. Fed. R. Bankr. P. 1014(b). Unlike the similar statute for transfer of civil actions, 28 U.S.C. § 1404(a), cited by the debtor, § 1412 "does not require that the action could have been brought in the transferee district."

Balboa Capital Corp. v. Siddiqui Transitions MHT LLC, 2017 U.S. Dist. LEXIS 219888, *5, n.1 (C.D. Cal. 2017); DHP Holdings II Corp. v. Home Depot, Inc. (In re DHP Holdings II Corp.), 435 B.R. 264, 268-69 (Bankr. D. Del. 2010); In re Texas International Co., 97 B.R. 582, 588 (Bankr. C.D. Cal. 1989). This disposes of the debtor's argument that because he was authorized to file only in the Southern District of Indiana, under 28 U.S.C. § 1408(1), the case cannot be transferred to this district. The restrictions applicable to debtors under § 1408(1) do not limit the court, acting under § 1412.

The test under § 1412 is in the disjunctive. 28 U.S.C. § 1412; Hacienda Heating & Cooling, Inc. v. United Artists Theatre Circuit, Inc., 2009 U.S. Dist. LEXIS 131313, *7-8, 2009 WL 8238063 (D. Ariz. 2009); Independent Stationers Inc. v. Vaughn, 2000 U.S. Dist. LEXIS 14207, *6-7, 2000 WL 1449854 (S.D. Ind. 2000). That is, "the phrases 'interest of justice' and 'for the convenience of the parties' 'each give authority independent of the other.'" Enron Corp. v. Arora (In re Enron Corp.), 317 B.R. 629, 637-38 (Bankr. S.D.N.Y. 2004). The analysis "is inherently factual and necessarily entails the exercise of discretion based on the totality of the circumstances." Donald v. Curry (In re Donald), 328 B.R. 192, 204 (9th Cir. BAP 2005); Ensource Invs. LLC v. Tatham, 2017 U.S. Dist. LEXIS 145208, *5, 2017 WL 3923784 (S.D. Cal. 2017). The burden of proof is on the moving party; the standard of proof is by a preponderance of the evidence. Hacienda Heating & Cooling, Inc., 2009 U.S. Dist. LEXIS 131313, at *8.

In assessing the "convenience of the parties" test, the court may consider "1. proximity of creditors of every kind to the court; 2. proximity of the debtor; 3. proximity of witnesses necessary to the administration of the estate; 4. location of the assets; 5. economic administration of the estate; and 6. necessity for ancillary administration if liquidation should result." In re Mun. Corr., LLC, 2012 Bankr. LEXIS 5938, *11-12 (Bankr. D. Nev. 2012). This list is not exclusive. Donald, 328 B.R. at 204. In assessing the "interest of justice" test, the court considers "whether transfer of venue 'will promote the efficient administration of the estate, judicial economy, timeliness and fairness.'" In re B.L. of Miami, Inc., 294 B.R. 325, 334 (Bankr. D. Nev. 2003) (emphasis added).

The debtor filed this chapter 7 case on May 7, 2015 and received a chapter 7 discharge on October 5, 2015. On August 14, 2015, before the discharge was entered, the moving parties filed an adversary complaint against the debtor for a determination of nondischargeability of debts the moving parties asserted he owes them. The facts underlying the moving parties' claims were the subject of state court litigation that was pending when the debtor commenced this chapter 7 case. On December 10, 2015, this court stayed the adversary proceeding and lifted the automatic stay to permit the parties to proceed in the state court action and, once it was concluded, to return to this court for a determination of the issue of dischargeability.

On June 8, 2016, the debtor filed a chapter 13 case in the bankruptcy court for the Southern District of Indiana (the "first Indiana case"). On July 27, 2016, the moving parties filed a motion in this court to change the venue of the first Indiana case to this court. The debtor responded that the motion was filed in the wrong court; that is, that it should have been filed in the Indiana bankruptcy court, but that, in any event, the motion was moot because the debtor had, on August 2, 2016, filed in that court a voluntary motion to dismiss the case.

This court concluded that, under Fed. R. Bankr. P. 1014(b), this court, rather than the Indiana court, was the appropriate court to determine the motion to change

venue, and by order filed August 24, 2016, ordered the venue of the first Indiana case transferred to this court, where it was assigned Case No. 16-26097. By minute order filed September 21, 2016, this court dismissed that case and barred the debtor from filing a bankruptcy case in any district for 180 days, pursuant to § 109(g) of the Bankruptcy Code. Because the adversary proceeding remains pending, albeit stayed, this case, Case No. 15-23746, has never been closed.

In granting the moving parties' motion to change venue of the first Indiana case, this court ruled as follows:

> The court has no hesitation in concluding that the debtor filed the Indiana case for the primary, if not sole, purpose of preventing the Sacramento County Superior Court from ruling on the moving parties' motion for terminating sanctions. The debtor had by then disobeyed two earlier court orders that he produce responses and documents; in response to one of those orders, he had threatened the moving parties' attorney with another bankruptcy filing; and he timed the filing of the Indiana case so he would have an excuse not to file opposition to the motion for terminating sanctions.

Civil Minutes, Aug. 24, 2016, DN 89 ("Aug. 24, 2016 Minutes"), p. 5.

The moving parties state that after this court dismissed the first Indiana case and the parties returned to the state court, the debtor continued with various discovery abuses, which resulted in the state court, on March 29, 2017, issuing terminating sanctions against him.[2] His default was entered on June 19, 2017. The debtor then filed motions for reconsideration, which were denied, and an appeal, which was dismissed. A default prove-up hearing was scheduled for June 9, 2018. On May 25, 2018, the debtor filed a second chapter 13 case in the Southern District of Indiana, Case No. 18-04064 ("the second Indiana case"), which automatically stayed further prosecution of the state court action, including the prove-up hearing. In short, the debtor has again used the bankruptcy system to try to stop, or at the very least, hinder and delay, the state court action against him, just as he did with the first Indiana case.

But the debtor has upped his gamesmanship even further. In his opposition, he states that venue of the state court action itself is proper in the Southern District of Indiana under 28 U.S.C. § 1409, as a matter related to his bankruptcy case there. He states, "given the tortured history and costs that have been borne by both the Debtor and [the moving parties], it is time for a fresh adverse proceeding in the Southern Indiana District be initiated. Ideally, the matter can be mediated, and a resolution obtained that will not prejudice other Creditors as would a Change of Venue to the Eastern District of California." Debtor's Opposition, filed July 30, 2018 ("Opp."), at 7:23-26. Bankruptcy has as one of its purposes a fresh start for the debtor. That does not encompass, however, a fresh start in a state court action the debtor has dragged out too long and that is on the verge of being concluded nor is bankruptcy a forum for forcing mediation on a creditor.

In an especially audacious move, the debtor has filed, in the adversary proceeding between the parties in this court, a Notice of Removal by which he has removed the state court action to this court. He states his position that "[t]he Southern District of Indiana has ultimate jurisdiction over the removed action pursuant to 28 U.S.C. § 1334" and that "[t]he State Court Action may be removed to the S.D. Indiana Bankruptcy Court pursuant to 28 U.S.C. § 1452." Notice of Removal,

filed Aug. 20, 2018 in AP No. 15-2160.

The court will deal with the Notice of Removal separately. For present purposes, it is significant that it was filed three and a half years into the state court litigation (during which time the debtor constantly thwarted the moving parties' discovery efforts), and two and a half years after this court lifted the automatic stay to allow the state court action to go forward, and a year and a half after the state court issued terminating sanctions against the debtor on both the moving parties' complaint against him and his complaint against them. Given this history, the court finds the filing of the Notice of Removal to be a brazen display of improper forum shopping and additional support for the court's conclusion that the debtor filed the second Indiana case and continues to use the bankruptcy process for a blatantly improper purpose.

In its ruling on the motion to change venue of the first Indiana case, this court also concluded the debtor had "failed utterly to comply with his duty of complete and accurate disclosure in the Indiana case, making under oath statements that were blatantly inaccurate or incomplete." Aug. 24, 2016 Minutes, pp. 5-6. The same is true of the schedules and statements the debtor has filed in the second Indiana case. Since the case was filed, on May 25, 2018, the debtor has filed three sets of creditor schedules, two sets of asset schedules, and two statements of financial affairs. On the amended schedules, the debtor radically changed both the assets and the debts listed, and on the amended statement of affairs, added information that, if true, should have been disclosed in the original and that, in itself, appears to have been incompletely disclosed.

On his original Schedule A, the debtor listed an interest in a residence in Fishers, Indiana which, according to his petition, is his residence. He listed its value as $279,000 and added under Other Information, "Paid for part of purchase of residence through credit obtained solely in wife's name and title in wife's name." He described the nature of his ownership interest in the property as "Loan to wife." He did not indicate the amount of the loan and did not list any claim to recover it on his Schedule A/B. In his initial statement of affairs, he answered "No" to the question whether he had, within the prior two years, sold, traded, or transferred any property to anyone, other than in the ordinary course of business.

On his amended Schedule A/B, filed one month later, the debtor deleted his interest in the residence, testifying he has no legal or equitable interest in any real property. In an amended statement of affairs, filed the same day, he listed his wife as having received the following transfer on September 21, 2016:

> While living in expensive temporary housing in Fishers area in late July, August, and September 2016, a hardship loan distribution was obtained working with German American Bank. Loan distribution was from the Calvin R. and Audrey Bones Family Trust in September 2016 in the amount of $50,000 to allow downpayment on [the debtor's current residence address] Fishers, IN by Cynthia avoiding Purchase Mortgage Insurance.

The debtor added in the amended statement of affairs that the payment was reimbursement for household rent and utilities, counseling and attorney's fees in a "domestic custodial matter" in Sacramento, and an "agreement of no rent to be paid for Bones Law Firm home office." This information directly contradicts the debtor's original Schedule A, in which he described his interest in the residence as a "Loan to wife."

On his original Schedule A/B, where required to state whether he owns or has any legal or equitable interest in any of the following, the debtor answered "No": claims against third parties, "other amounts someone owes you," and "other contingent and unliquidated claims of every nature." Where required to state whether he owns or has any legal or equitable interest in any business-related property, the debtor answered "No," thereby disclosing no accounts receivable. On his amended Schedule A/B, filed one month later, under "other amounts someone owes you," the debtor listed a total of $70,000, including "In re Melendrez, . . . a contingency trust contest case Debtor is working on worth from 0 to $120,000" and monies he claims are owed him by the moving parties, the value of which, with accrued interest and costs, he states is "0 to $150,000." For purposes of arriving at the $70,000 total in the value column, the debtor "assigned" a value of $30,000 to the Melendrez matter and $40,000 to the moving parties' matter.[3]

Although neither of those matters was mentioned on the debtor's original Schedule A/B, he had listed, on his original Schedule D, James Savage as being owed $16,000 with "Accounts Receivable as Collateral" and Raymond Goyenechea, for $5,000, "tied to accounts receivable and Melendrez matter now." He included both listings again on his first amended Schedule D, filed June 25. But on a second amended Schedule D, filed July 24, the debtor deleted Savage and Goyenechea entirely – thus claiming he has no secured creditors, and added them to his Schedule E/F. If it is accurate that Savage's claim is not secured, then one of two things is true. Either Savage has somehow lost his security interest in the debtor's receivables, in a way that cannot be deduced from the schedules or statements filed in any of the debtor's cases, or Savage did not have a security interest in the first place, in which case the debtor improperly listed him as secured in his Sacramento case and his first Indiana case and improperly relied on the existence of a security interest in Savage's favor in obtaining abandonment of his business assets, including his receivables, in the Sacramento case. See Amended Motion for Abandonment Order filed June 25, 2015 and minute order filed Oct. 29, 2015 in this case.

On his second amended Schedule E/F, the debtor also deleted Navient, which had been listed on the first two versions – at $145,848 and $166,559, respectively, and North American Company for Life & Health, which he had added on his first amended Schedule E/F, at $14,000. With those deletions and the transfer of Savage and Goyenechea from Schedule D to Schedule E/F, the debtor has changed the total of his general unsecured debts from $249,557 to $290,668 to $131,109.

Under priority claims on his original Schedule E/F, the debtor listed a $55,000 debt to Frances Twomey for child support and related payments under a dissolution order, for the period 2013-2018. On his amended Schedule E/F, he reduced the amount to $41,389 with an explanation of how that figure was arrived at but no explanation of why it was so much higher on the original schedule. The debtor also added a $22,000 debt to Amy Sue Bones, also for child support, for the period 1996 to 2005. The debt to Amy Sue Bones was not listed at all on the debtor's schedules in this Sacramento case, filed in 2015, the schedules in his first Indiana case, filed in 2016, or the original Schedule E/F in the second Indiana case. Given that the debt was allegedly incurred between 1996 and 2005, the debtor was required to list it on all of those schedules.

A comparison of the debtor's schedules in the first and second Indiana cases reveals even more discrepancies. On his Schedule D filed June 20, 2016 in the first case, the debtor listed a $41,428 portion of his debt to the IRS as secured by "Trust Distributions over 5 years starting 3/2017. Gross $250,000." And in listing expected increases to his income, on his Schedule I, the debtor stated, "Trust

Distributions begin 3/2017." In his amended statement of affairs in the second Indiana case, the debtor did refer to a $50,000 hardship distribution from the Calvin R. and Audrey Bones Family Trust, as quoted above, adding that the trust "was to be distributed over a 5 year period, unless hardship was identified." But the references in the first Indiana case to trust distributions in the gross amount of $250,000 and to trust distributions to begin in March of 2017 have disappeared.[4]

Not only has the debtor continued in the second Indiana case the pattern of discrepancies and obfuscation the court observed in ruling on the motion to change venue of the first Indiana case, it appears he filed the second Indiana case with no intention of obtaining confirmation of a chapter 13 plan. He listed his wife's income as "N/A" despite the fact that the form requires a debtor who is married and not filing jointly, but whose spouse is living with him, to include his spouse's income information.[5] On his original Schedule I, the debtor listed his income as net business income (he is a self-employed attorney), $3,000; social security income, $970; and social security for his son, $460. With total income of $4,430 and household expenses of $3,605 on his original Schedule J, he scheduled monthly net income of $825.

After a $1,600 expense on the "rent or home ownership" line on the form Schedule I (which appears to be the $1,600 the debtor has agreed to pay his wife as a contribution to total household expenses of $4,400 – see below), the debtor's second largest expense, according to his Schedules J, is $1,250 for the support of others who do not live with him – a daughter and a son. He added that his obligation to pay support for his daughter "expires [in] August 2018," but he did not break down the $1,250 as between his daughter and his son. Thus, the court and creditors cannot determine what his expenses are expected to be beginning last month. Assuming the debtor's most recently-filed Schedules I and J supported feasibility to begin with, which they do not (see below), the absence of a breakdown of the support obligation, part of which ended in August, renders it impossible to assess the feasibility of any plan the debtor might propose.

On amended Schedules I and J, filed June 25, the debtor listed his net business income as <$620>. Changes to his and his son's social security income bring his total income to $1,058. He added a $385 transportation expense he initially scheduled at $0. That, along with other small changes, brings his household expenses to $4,031, leaving monthly net income of <$2,973>. The debtor has not revealed why he dropped his expected business income from $3,000 to <$620> or how he expects to fund a chapter 13 plan with a regular monthly payment (see below). Further, the debtor's inability or unwillingness to properly schedule his creditors as secured or unsecured and his addition of some creditors and deletion of others, as discussed above, in themselves make his ability to propose a confirmable plan highly doubtful.

The debtor's first chapter 13 plan in the second Indiana case, filed June 25, 2018 with his first amended schedules, called for monthly plan payments of $550 for 8 months, $1,050 for 51 months, and a final payment, of $95,000, in month 60. The plan proposed monthly payments to James Savage and Raymond Goyenechea, as secured creditors, and payments to Frances Twomey and Amy Sue Bones on account of the scheduled child support claims. The plan did not provide for any claim of the IRS, which belies the debtor's assertion in his opposition that the second Indiana case has as its purpose "Debtor's structuring for an orderly long-term installment repayment of debt owed the Internal Revenue Service, in particular as Debtor's main creditor . . . ." Opp. at 3:27-4:1. Having decided to schedule the Savage and Goyenechea claims as unsecured, the debtor filed an amended plan with his second

amended schedules, on July 24. The amended plan calls for monthly plan payments of $625 for 6 months, $850 for 12 months, $1,000 for 24 months, $1,800 for 17 months, and $1,900 for 1 month. The amended plan provides for no secured claims and no priority claims except the child support claims of Frances Twomey and Amy Sue Bones.[6]

How the debtor expected to fund these monthly plan payments is a mystery. As indicated above, on his first amended Schedule E/F, filed June 25, the debtor added a debt to North American Company for Life & Health for $14,000. He stated he had borrowed against his life insurance policy in December of 2017 and March and May of 2018, including $9,000 borrowed in March and May. On the amended Schedule E/F, the debtor also added a $6,400 debt to his wife on account of his "obligation of paying the minimum of $1600 per month toward the household budget of $4400 per month," which he says he did not meet for one month in the fall of 2017 or in March, April, or May of 2018.[7]

Thus, for at least the three months before he filed the second Indiana case, the debtor incurred new debt totaling at least $13,800 ($9,000 against his insurance policy and $4,800 to his wife). On July 9, two weeks after he had filed the amended Schedule I on which he reduced his net business income from $3,000 to <$620>, the debtor filed a motion to incur debt, seeking to borrow an additional $10,000 against his life insurance policy to "assure payment of monthly Chapter 13 plan in the event of a shortfall in any month," to prepare for and hold a deposition in the Melendrez case, to defend this motion to change venue, and to consult with an attorney in Indianapolis about bankruptcy.[8] Given these circumstances, the court has no hesitation in concluding the debtor will not be able to fund a chapter 13 plan.[9]

The court concludes that, in the second Indiana case, the debtor failed to comply with his duty to file true, complete, and accurate schedules and statements (see Diamond Z Trailer, Inc. v. JZ L.L.C. (In re JZ L.L.C.), 371 B.R. 412, 417 (9th Cir. BAP 2007)) and failed to file the case with any evident intention of obtaining confirmation of a chapter 13 plan. These deficiencies are all the more troubling in light of the debtor's years of practice as a bankruptcy attorney. Given all of these circumstances, it is very clear to the court, and the court concludes, the debtor filed the second Indiana case in bad faith.

As against these considerations, the debtor's stated reasons for filing the case in Indiana carry little, if any, weight. He refers to his family's many activities in Indiana, his many indices of residency in Indiana, and the great cost and inconvenience of having to travel to California. The argument might have had some force were it not for the gross deficiencies in the case. The debtor also claims the time and costs of traveling to Sacramento would "take away from the division from the Debtor's estate to all the other Creditors, in particular, Debtor's major Creditor, the Internal Revenue Service through its Revenue Service Agent's office in Carmel, Indiana." Opp. at 2:27-3:2. This is a chapter 13 case, not a liquidation case, and the debtor's estate is not going to be divided. If the debtor were to propose a chapter 13 plan that included the IRS, which he has not done, it would make no difference to the IRS whether the case is in Indiana or California. Similarly, the debtor's contention that "the multiple creditors, in particular the IRS, will receive a greater portion of the bankruptcy estates assets if the matter remains in Indiana" (Opp. at 9:24-26) does not make sense.

Finally, the debtor's reference to the moving parties' alleged "endless financial resources" (Opp. at 2:19) is inadmissible and inappropriate. His "history" of the moving parties' counsel, in his declaration, is grossly

inappropriate. His contention that any judgment the moving parties might obtain would be virtually uncollectible is irrelevant and, in that it is supported only by the debtor's bankruptcy schedules, unreliable.

To conclude, the timing of the second Indiana filing, the debtor's filing of multiple sets of schedules and statements with gross inconsistencies and omissions, his filing of successive chapter 13 plans having virtually no chance of being confirmed, and his bold attempt to move the almost four-year-old state court action to Indiana support no other conclusion than that he filed the second Indiana case for the purpose of preventing the Sacramento County Superior Court from proceeding with the default prove-up hearing and ultimately concluding the action. In the interest of justice and for the convenience of the only parties besides the debtor who have expressed an interest in any of his bankruptcy cases, the second Indiana case should be transferred to this district, and the court will issue an order transferring the case forthwith.

The court will lift the automatic stay imposed by the second Indiana case to permit the state court action to proceed immediately. The court finds the debtor has willfully failed to appear in proper prosecution of the second Indiana case because he did not file the case for any proper purpose, because he failed to file true, complete, and accurate schedules and statements, and because he failed to file the case with the intention of obtaining confirmation of a chapter 13 plan. Thus, the case, once transferred to this court, will be dismissed with a 180-day bar to re-filing under § 109(g)(1).

The court will hear the matter.

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1 The debtor's request for dismissal of the motion is based on his argument that the Indiana court is the proper court to decide the venue issue. For the reason just discussed, the request will be denied.

2 It appears from the Order Granting Terminating Sanctions, filed March 29, 2017, a copy of which the moving parties have filed as an exhibit, that the debtor's action against the moving parties has been consolidated with their action against him, and that his answer to their complaint has been stricken and his complaint against them has been dismissed with prejudice.

3 The state court's order dismissing the debtor's complaint against the moving parties with prejudice undercuts any notion that his claim against them has this or any value.

4 The debtor has never listed his right to trust distributions on any Schedule A/B in any of his cases, although question 25 appears to call for it: "Trusts, equitable or future interests in property (other than anything listed in line 1), and rights or powers exercisable for your benefit" (phrased slightly differently in question 19 of the form in effect in this case, in 2015).

5 His wife's address, on the debtor's amended Schedule E/F, is the same as the debtor's residence address.

6 The IRS has filed a proof of claim for $66,206 secured and $28,256 priority.

7 Neither the debt to North American nor the debt to the debtor's wife was listed on his original Schedule E/F, filed a month earlier. And the debt to North

American was dropped on the second amended version, filed a month later.

8 **When the debtor failed, for a full month, to file a certificate of service of the motion to incur debt, pursuant to a Notice of Deficient Filing, the Indiana court ordered the motion stricken from the record.**

9 **The chapter 13 trustee has filed an objection to confirmation, raising six different grounds not including that he is awaiting a determination of the venue issue.**

6. 18-24649-D-7 TROY FINLEY — ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
8-8-18 [17]

Final ruling:

This case was dismissed on August 13, 2018. As a result the order to show cause will be removed from calendar as moot. No appearance is necessary.

7. 10-42050-D-7 GJH-24 VINCENT/MALANIE SINGH — MOTION FOR COMPENSATION FOR GREGORY J. HUGHES, TRUSTEE'S ATTORNEY
8-8-18 [1059]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed. The record establishes, and the court finds, that the fees and costs requested are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a). As such, the court will grant the motion by minute order and the moving party is to submit an appropriate order. No appearance is necessary.

8. 14-20064-D-7 DMW-3 GLENN GREGO — MOTION FOR COMPENSATION FOR DOUGLAS M. WHATLEY, CHAPTER 7 TRUSTEE
8-2-18 [746]

Final ruling:

This is the chapter 7 trustee's request for a final allowance of compensation, filed August 2, 2018. On August 15, 2018, the trustee filed a notice purporting to withdraw the request, and the same day, filed a new request for compensation, which he set for hearing on October 17, 2018. In the second request, the trustee seeks compensation in a lower amount than in his initial request.

The trustee was not free to unilaterally withdraw his initial request because the debtor had, on August 13, 2018, filed opposition. See Fed. R. Civ. P. 41(a)(1) and (2), incorporated herein by Fed. R. Bankr. P. 7041 and 9014(c). The court will, however, deny the request as moot, because it was superseded by the trustee's second

request – the one filed August 15, 2018. The debtor's opposition does not challenge the amount sought by the trustee but rather states the trustee deserves no compensation. The court will therefore deem the debtor's opposition to the trustee's initial request to be an opposition to the second request and will consider it at the time the court considers the second request.

This request will be denied as moot by minute order. No appearance is necessary.

9. 17-20981-D-7 KJH-3 — ALEX/PATRICIA FRANCOIS — MOTION FOR ADMINISTRATIVE EXPENSES 8-8-18 [69]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion for payment of administrative tax expense incurred by the estate of $70,000 to the IRS and $44,000 to the Franchise Tax Board is supported by the record. As such the court will grant the motion and the moving party is to submit an appropriate order. No appearance is necessary.

10. 17-20689-D-11 JBM-1 — MONUMENT SECURITY, INC. — MOTION FOR ORDER DEEMING TIMELY SAVE MART SUPERMARKETS LATE-FILED CLAIM 8-7-18 [305]

11. 18-23305-D-7 — JEFFREY WILES — TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS 7-18-18 [18]

Final ruling:

This is the debtor's opposition to the trustee's motion to dismiss this case for failure to appear at the meeting of creditors. The record in this case indicates the debtor appeared at the continued meeting, on August 22, 2018. The meeting was concluded and the trustee has issued a notice of filing report of no distribution. As a result of the debtor's appearance at the continued meeting of creditors, the motion will be denied as moot by minute order. No appearance is necessary.

12. 18-24322-D-7 NICHOLAS/HEATHER SCHILLACE
VVF-1
HONDA LEASE TRUST VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
8-9-18 [15]

13. 15-23746-D-7 GORDON BONES
15-2160 JJG-13
MELISSA JOSEPH, AS TRUSTEE OF THE RICHARD W. DE SI V. BONES

MOTION TO EXTEND TIME AND/OR MOTION TO ALLOW ADVERSE CLAIMANT TO SEEK REMAND
8-22-18 [53]

Tentative ruling:

This is the debtor's motion to extend the hearing date on a motion to change venue (the "venue motion") that is also on this calendar, for leave to amend the debtor's declaration and memorandum of points and authorities in opposition to the venue motion, to allow the debtor to file a declaration and memorandum in support of a notice of removal he has filed in a related adversary proceeding, and to allow adverse claimants (the moving parties in the venue motion) to seek remand. The motion will be denied in its entirety and the court will, sua sponte, remand the state court action.

On August 20, 2018, the debtor filed a Notice of Removal in AP No. 15-2160, which is pending in this parent bankruptcy case. The caption of the notice bears the names of the bankruptcy court for both the Southern District of Indiana and the Eastern District of California. The caption bears the case numbers of the debtor's case in this district and a case in the Sacramento County Superior Court. The first sentence bears the case number of the debtor's case in the Southern District of Indiana. The Notice of Removal states that the debtor "gives Notice of Removal of the above-referenced state court action and related adverse proceeding action . . . ." Notice of Removal, filed Aug. 20, 2018, in AP No. 15-2160, at 1:24-25. Paragraph 1 of the Notice of Removal states that the removed action pertains to the consolidated case in Sacramento County Superior Court that is comprised of the debtor's action against the moving parties in the venue motion and their action against him.

The Notice of Removal also states that "[t]he Southern District of Indiana has ultimate jurisdiction over the removed action pursuant to 28 U.S.C. § 1334"; that "[t]he State Court Action may be removed to the S.D. Indiana Bankruptcy Court pursuant to 28 U.S.C. § 1452"; and that "[u]pon removal of the above, the proceeding is a core proceeding." Id. at 2:18-23. The notice states it "is to be filed in Superior Court of California, Sacramento, the E.D. California Bankruptcy Court and the S.D. Indiana Bankruptcy Court." Id. at 2:26-27. The debtor's memo in support of his motion to extend time states he has filed the Notice of Removal in the Sacramento County Superior Court.

The motion to extend time, etc., will be denied for the following reasons. First, the signature date on the proof of service is August 17, 2018 ("Executed August 17, 2018") but the service date is August 22, 2018 ("I certify that on August 22, 2018 . . . I . . . served . . ."). Both cannot be true. Second, the notice of motion and motion were filed as a single document, contrary to LBR 9014-1(d)(4). Third, the moving papers do not include a docket control number, as required by LBR 9014-1(c)(2). Fourth, the notice of motion and motion purport to require the filing of written opposition, whereas the moving party failed to give 28 days' notice of the hearing, as required by LBR 9014-1(f)(1).

Fifth, and more fundamentally, the Notice of Removal on which the motion is based was improper. Attached to the Notice of Removal are copies of two complaints filed in the Sacramento County Superior Court, one commencing the debtor's action against the moving parties in the venue motion and the other commencing their action against him. Both complaints were filed in 2015. Also attached to the Notice of Removal is a copy of a minute order dated June 8, 2018 in the now- consolidated state court action that includes a tentative ruling for a default prove-up hearing. The moving parties in the venue motion have informed the court that terminating sanctions have been entered against the debtor in the form of an order striking his answer to their complaint, that his default has been entered, and that a default prove-up hearing was set for June 9, 2018. The state court has also – a year and a half ago – dismissed the debtor's action against the moving parties with prejudice. Given these circumstances, the Notice of Removal comes long after the time a state court action is ordinarily removed to a bankruptcy court, although technically, it was filed within the 90-day deadline defined in Fed. R. Bankr. P. 9027. That is, as the debtor points out, it was filed within the 90-day period following the filing of the debtor's second chapter 13 case in the bankruptcy court for the Southern District of Indiana.

The debtor states summarily in his opposition to the venue motion that the state court action "is proper in the Southern District of Indiana pursuant to 28 U.S.C. § 1409 because this matter is related to a bankruptcy case in the Southern District of Indiana . . . ." Debtor's Opposition to Venue Motion, filed July 30, 2018, at 9:12-13. The court need not determine the "related to" jurisdiction issue because the court finds that remand is proper on equitable grounds, under the bankruptcy removal statute, 28 U.S.C. § 1452. Under subsection (a) of that section, a party may remove a claim or cause of action in a civil action if the district court has jurisdiction of such claim or cause of action under 28 U.S.C. § 1334; that is, if the district court has bankruptcy jurisdiction. Assuming without deciding that this court has "related to" jurisdiction of the state court action under § 1334(b), subsection (b) of § 1452 governs here. It provides, "The court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground."

> **Section 1452(b) permits "remand on any equitable ground" and is silent about subject matter jurisdiction. The bankruptcy remand authority is much broader than the general federal removal statute, 28 U.S.C. §§ 1441-47, which permits remand only for defective removal or for lack of subject matter jurisdiction. [¶] The broader authority to remand in bankruptcy matters is significant. The power to remand bankruptcy matters on "any equitable ground" manifests the legislative reversal by the Congress of the common law rule that a court with jurisdiction must exercise such jurisdiction whenever asked to do so. [¶] "Equitable grounds" are understood to be what is "reasonable, fair, and appropriate" without reference to the historical distinction between law and equity.**

Billington v. Winograde (In re Hotel Mt. Lassen), 207 B.R. 935, 942 (Bankr. E.D. Cal. 1997) (citations omitted).

"The statutory standard for remand under 28 U.S.C. § 1452(b) is 'any equitable ground.' 28 U.S.C. § 1452(b). . . . This 'any equitable ground' remand standard is an unusually broad grant of authority. It subsumes and reaches beyond all of the reasons for remand under nonbankruptcy removal statutes." McCarthy v. Prince (In re McCarthy), 230 B.R. 414, 417 (9th Cir. BAP 1999). The court may consider a wide variety of factors under the "any equitable ground" standard, including the extent to which state law issues predominate over bankruptcy issues, the jurisdictional basis of the action, if any, other than § 1334, the degree of relatedness to the main bankruptcy case, the substance rather than the form of an asserted core proceeding, the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court, the likelihood the commencement of the bankruptcy case involves forum shopping, and the possibility of prejudice to the other parties in the removed action. Wood v. Johnson (In re Wood), 2011 Bankr. LEXIS 5303, *25-26 (9th Cir. BAP 2011). In addition, the court may sua sponte remand an action that was removed in bad faith. Citibank, N.A. v. Cowart (In re Cowart), 2015 Bankr. LEXIS 3688, *6 (Bankr. C.D. Cal. 2015); Roberts v. Bisno (In re Bisno), 433 B.R. 753, 758 (Bankr. C.D. Cal. 2010).

For the reasons discussed in the court's ruling on the venue motion, which the court incorporates herein by this reference, all of these factors weigh in favor of remand. There are no bankruptcy law issues in the removed action, only state law issues. The debtor has made no showing of federal jurisdiction over the removed action except to rely on the filing of his bankruptcy case in Indiana. The removed action has no relatedness to the debtor's Indiana bankruptcy case but for the debtor's presence in the action as the defendant. The removed action is not a core proceeding. This court two years ago addressed the problem of the dischargeability issues raised in the moving parties' adversary proceeding and stayed that proceeding for the parties to return here to determine them in the event of a state court judgment in the moving parties' favor. The court has found the debtor's filing of the Indiana case to have been a case of improper forum shopping. The moving parties would suffer prejudice far in excess of the prejudice to the debtor of travel time and costs if they were to have to familiarize this court or the Indiana bankruptcy court with an action that is virtually ready for judgment to be issued. Finally, for these reasons and the additional reasons discussed in its ruling on the venue motion, with respect to the debtor's bad faith in filing the Indiana case, the court concludes the Notice of Removal was filed in bad faith.

For the reasons stated, the motion will be denied in its entirety and the court will sua sponte remand the state court action to the Sacramento County Superior Court. The court will hear the matter.

14. 18-22453-D-11 ECS REFINING, INC. ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
8-20-18 [451]

Final ruling:

The deficiency has been corrected. As a result the court will issue a minute order discharging the order to show cause. No appearance is necessary.

15. 18-22453-D-11 BJ-2
SUMMITBRIDGE NATIONAL INVESTMENTS V, LLC VS.
ECS REFINING, INC.
CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
7-6-18 [248]

16. 18-22453-D-11 BJ-3
ECS REFINING, INC.
CONTINUED MOTION TO CONVERT CASE FROM CHAPTER 11 TO CHAPTER 7
7-6-18 [256]

17. 18-22453-D-11 FWP-12
ECS REFINING, INC.
CONTINUED MOTION TO ABANDON
7-6-18 [263]

18. 18-22453-D-11 FWP-13
ECS REFINING, INC.
CONTINUED MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
7-6-18 [269]

19.	18-22453-D-11 FWP-14	ECS REFINING, INC.	CONTINUED MOTION TO REJECT LEASE OR EXECUTORY CONTRACT 7-6-18 [276]
20.	18-22453-D-11 FWP-15	ECS REFINING, INC.	CONTINUED MOTION TO REJECT LEASE OR EXECUTORY CONTRACT 7-6-18 [283]
21.	18-22453-D-11 FWP-21	ECS REFINING, INC.	FINAL HEARING RE: MOTION TO USE CASH COLLATERAL 8-17-18 [441]
22.	18-22453-D-11	ECS REFINING, INC.	MOTION TO WAIVE REQUIREMENT TO DESIGNATE LOCAL COUNSEL 8-14-18 [420]

23. 16-21659-D-7 NOS-5 — TRONG NGUYEN — CONTINUED MOTION TO EMPLOY CHRISTOPHER D. HUGHES AS ATTORNEY(S) 8-9-18 [154]

24. 16-27672-D-7 — DAVID LIND — MOTION FOR RECUSAL 8-7-18 [569]

Tentative ruling:

This is the debtor's motion requesting that the judge assigned to this case recuse himself. The trustee has filed opposition. For the following reasons, the motion will be denied.

"A bankruptcy judge shall be governed by 28 U.S.C. § 455, and disqualified from presiding over the proceeding or contested matter in which the disqualifying circumstance arises or, if appropriate, shall be disqualified from presiding over the case." Fed. R. Bankr. P. 5004(a). Section 455 of Title 28, in turn, provides in pertinent part: "(a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned. (b) He shall also disqualify himself in the following circumstances: (1) Where he has a personal bias or prejudice concerning a party . . . ."

Under § 455(a), "[t]he standard for recusal is clearly an objective one: 'whether a reasonable person with knowledge of all of the facts would conclude that the judge's impartiality might reasonably be questioned.'" In re Georgetown Park Apts., Ltd., 143 B.R. 557, 559 (9th Cir. BAP 1992), quoting United States v. Nelson, 718 F.2d 315, 321 (9th Cir. 1983) (other citations omitted). Additionally, "under the canons of judicial ethics, every judicial officer must satisfy himself that he is actually unbiased towards the parties in each case and that his impartiality is not reasonably subject to question." In re Bernard, 31 F.3d 842, 843 (9th Cir. 1994). Under this standard, the judge must not only be subjectively confident that he is unbiased; it is also objectively necessary that "an informed, rational, objective observer would not doubt his impartiality." Id. at 844, citing United States v. Winston, 613 F.2d 221, 222 (9th Cir. 1980).

Finally, "[t]he alleged bias and prejudice to be disqualifying must stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case." Liteky v. United States, 510 U.S. 540, 545, n.1 (1994) (citation omitted).

> **[J]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion. In and of themselves (i.e., apart from surrounding comments or accompanying opinion), they cannot possibly show reliance upon an extrajudicial source; and can only in the rarest circumstances**

evidence the degree of favoritism or antagonism required . . . when no extrajudicial source is involved.

In re Focus Media, Inc., 378 F.3d 916, 930 (9th Cir. 2004), quoting Liteky, 510 U.S. at 555 (internal citation omitted).

The motion is based on the debtor's perception of a "lack of impartiality between [the trustee] and [the debtor]." Debtor's Motion, filed Aug. 7, 2018 ("Mot."), p. 1. In other words, the debtor perceives this judge as having exhibited bias in favor of the trustee and against the debtor. The debtor bases his claim that the judge is partial toward the trustee on allegations the trustee and the judge worked together many years ago. The trustee's testimony on this issue is accurate and amply refutes the suggestion that the judge is partial to the trustee's positions in various cases, including this one, on any basis at all. The judge is satisfied he has and has had no personal bias in the trustee's favor in any matter brought before him in any case, including this one.

As for the judge's alleged bias against the debtor, the debtor states that, at the first hearing in the case, the judge "vividly expressed how disgruntled [he was] over what [he] termed a multi filer who was $2,000,000 over the debt ceiling for Chapter 12." Mot., p. 1. The court recalls the hearing and recalls having noted that the schedules filed by the debtor, on their face, demonstrated that his debts exceeded the chapter 12 limit. The court also correctly noted the debtor's history of bankruptcy filings in this court. The judge may in fact have appeared disgruntled, but even if so, his attitude stemmed from facts demonstrated by the record in this and the debtor's prior cases, not from any personal bias or prejudice against the debtor and not from anything the judge learned other than from his participation in this and the earlier cases.

The debtor also complains the judge "always reduce[s] [his] concerns as . . . complaints based on opinions and conclusions" (Mot., p. 2) and requires the debtor "to follow local rules, present proper authenticated evidence and have expert testimony to back it all up" (id., p. 5), while "believ[ing] every word" the trustee says. Id., p. 2. The positions the debtor has taken in the case have usually, if not always, been based solely on his own opinions and conclusions, as is evident from his present motion. That is a problem of the debtor's creation, not the judge's. The debtor has chosen to represent himself in propria persona – that does not excuse him from complying with applicable rules of procedure and evidence. The court in this case has, in fact, allowed the debtor a good deal of leeway in connection with the rules of procedure – the debtor's motions generally do not comply with the requirements of LBR 9014-1 but the court nevertheless issues orders setting them for hearing.

The rest of the debtor's complaints center on his opinions of the trustee's conduct of this case and the court's rulings on various motions. The court has already addressed the former in its ruling on the debtor's recent motion to remove the trustee; nothing in the present motion changes the court's conclusions on that issue. The debtor's dissatisfaction with the court's rulings is not a valid basis for the judge to recuse himself. See Focus Media, Inc., 378 F.3d at 930, quoted above.

To conclude, the grounds advanced by the debtor are not such as would cause a rational, objective observer with knowledge of all the facts to question the court's impartiality. Further, the judge is satisfied he is and has been, throughout the case, actually unbiased and impartial toward the parties, including both the debtor

and the trustee.

For the reasons stated, the motion will be denied. The court will hear the matter.

25.	18-20095-D-7 DCJ-2	GINA CRONIN	MOTION TO REDEEM 8-22-18 [103]

26.	18-23396-D-11 RAH-4	METRO PALISADES, LLC	CONTINUED MOTION TO BORROW 8-17-18 [71]