UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, December 10, 2020
Place: Department A – Courtroom #11
Fresno, California

ALL APPEARANCES MUST BE TELEPHONIC
(Please see the court's website for instructions.)

Pursuant to District Court General Order 618, no persons are permitted to appear in court unless authorized by order of the court until further notice. All appearances of parties and attorneys shall be telephonic through CourtCall. The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878.

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. 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. 20-10509-A-13 **IN RE: EDDIE CALDWELL**
TCS-2

MOTION TO MODIFY PLAN
10-22-2020 [53]

EDDIE CALDWELL/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to January 14, 2021 at 9:30 a.m.

ORDER: The court will issue an order.

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). The Chapter 13 trustee ("Trustee") filed an objection to the debtor's motion to modify the Chapter 13 plan. Tr.'s Opp'n, Doc. #64. Wheels Financial Group, LLC ("Creditor"), a secured creditor, also filed an objection to debtor's motion. Doc. #66. Unless this case is voluntarily converted to Chapter 7, dismissed, or the oppositions to confirmation are withdrawn, the debtor shall file and serve a written response no later than December 24, 2020. The response shall specifically address each issue raised in the objections to confirmation, state whether the issues are disputed or undisputed, and include admissible evidence to support the debtor's position. Trustee and Creditor shall file and serve a reply, if any, by January 7, 2021.

If the debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than January 7, 2021. If the debtor does not timely file a modified plan or a written response, this motion will be denied on the grounds stated in Trustee's and Creditor's oppositions without a further hearing.

As a procedural matter, the Notice of Hearing filed in connection with the debtor's motion does not comply with LBR 9014-1(d)(3)(B)(i). The court urges counsel review the local rules to ensure compliance in future matters.

2. 15-11829-A-13 **IN RE: ANTONIO BUSTAMANTE AND GABRIELA LOPEZ**
MHM-2

MOTION TO DETERMINE FINAL CURE AND MORTGAGE PAYMENT RULE 3002.1
11-4-2020 [73]

MICHAEL MEYER/MV
THOMAS GILLIS/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.

Federal Rule of Bankruptcy Procedure 3002.1(g) requires that within 21 days after service of the notice under subdivision (f) of this rule, the creditor shall file and serve on the debtor, debtor's counsel, and the trustee a statement indicating (1) whether it agrees that the debtor has paid in full the amount required to cure the default on the claim, and (2) whether the debtor is otherwise current on all payments consistent with 11 U.S.C. § 1322(b)(5).

Bankruptcy Rule 3002.1(h) states that on motion by the trustee filed within 21 days after service of the statement under subdivision (g) of this rule, the court shall, after notice and hearing, determine whether the debtor has cured the default and paid all required postpetition amounts.

The record shows that the debtors have cured the default with Harvest Park Homeowners Association and are current on payments to the same through September 20, 2020. Therefore, this motion is GRANTED.

3. 20-12732-A-13 **IN RE: JOSE CUIRIZ**
MHM-1

CONTINUED MOTION TO DISMISS CASE
10-21-2020 [27]

MICHAEL MEYER/MV
CHINONYE UGORJI/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The debtor filed a written response on November 3, 2020. Doc. #32. The court continued the hearing on this matter to December 10, 2020 at 9:30 a.m. Doc. #38.

Michael H. Meyer ("Trustee"), the Chapter 13 trustee in the bankruptcy case of Jose J. Cuiriz ("Debtor"), moves the court to dismiss this case under 11 U.S.C. § 1307(c)(1) for unreasonable delay that is prejudicial to creditors and under § 1307(e) because Debtor has failed to file his tax returns for the years 2016, 2017, and 2018.

Debtor asserts that the relevant tax returns were filed but have yet to be processed by the IRS. Doc. #32. A review of the docket shows that no filings have been made since the court continued the hearing.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth), 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) for unreasonable delay by debtor that is prejudicial to creditors and 11 U.S.C. § 1307(e) for failing to timely file tax returns.

The court is inclined to GRANT this motion, but will call this matter to determine the status of Debtor's tax returns.

4. 20-12636-A-13 **IN RE: YADWINDER/JASPREET BASSI**
MAT-2

MOTION TO CONFIRM PLAN
11-2-2020 [46]

YADWINDER BASSI/MV
MARCUS TORIGIAN/ATTY. FOR DBT.
MARCUS TORIGIAN/ATTY. FOR MV.

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 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(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.

This motion is GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

5. 20-12745-A-13 **IN RE: FREDDIE/DESIREE ESTRADA**
PBB-2

MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A.
10-29-2020 [22]

FREDDIE ESTRADA/MV
PETER BUNTING/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 as required by 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.

As a procedural matter, the Notice of Hearing filed in connection with the debtors' motion does not comply with LBR 9014-1(d)(3)(B)(i). The court urges counsel review the local rules to ensure compliance in future matters.

Freddie Elvis Estrada and Desiree Reyna Estrada (collectively, "Debtors"), the debtors in this Chapter 13 case, move the court for an order valuing the Debtors' vehicle, a 2015 Chevrolet Equinox LT ("Vehicle"), which is the collateral of Wells Fargo Bank, N.A. d/b/a Wells Fargo Auto. ("Creditor"). Doc. #22.

11 U.S.C. § 1325(a)(*) (the hanging paragraph) permits the debtor to value a motor vehicle acquired for the personal use of the debtor at its current value, as opposed to the amount due on the loan, if the loan was a purchase money security interest secured by the vehicle and the debt was not incurred within the 910-day period preceding the date of filing. 11 U.S.C. § 506(a)(1) limits a secured creditor's claim "to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim." Section 506(a)(2) of the Bankruptcy Code states that the value of personal property securing an allowed claim shall be determined based on the replacement value of such property as of the petition filing date. "Replacement value" where the personal property is "acquired for personal, family, or household purposes" means "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." 11 U.S.C. § 506(a)(2).

Debtors assert a replacement value of the Vehicle of $12,394.00 and ask the court for an order valuing the Vehicle at $12,394.00. Doc. #22; Doc. #24. Desiree Reyna Estrada, co-debtor, is competent to testify as to the value of the Vehicle. Debtors assert the Vehicle was purchased in February 2015, more than 910 days before the filing of this case. Doc. #24. Given the absence of contrary evidence, Debtors' opinion of value may be conclusive. Enewally v. Wash. Mut. Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004).

The motion is GRANTED. Creditor's secured claim will be fixed at $12,394.00. The proposed order shall specifically identify the collateral, and if applicable, the proof of claim to which it relates. The order will be effective upon confirmation of the Chapter 13 plan.

6. 20-13168-A-13 **IN RE: EVANGELINA VALENZUELA**
MHM-1

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
11-18-2020 [13]

JEFFREY ROWE/ATTY. FOR DBT.

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

An order dismissing this case was already entered on December 9, 2020. Doc. #19. The motion will be DENIED AS MOOT.

7. 19-13376-A-13 **IN RE: OPAL RIDER**
SLL-1

CONTINUED PRE-TRIAL CONFERENCE RE: AMENDED OBJECTION TO CLAIM OF WRCOG ENERGY EFFICIENCY AND WATER CONSERVATION PROGRAM FOR WESTERN RIVERSIDE COUNTY, CLAIM NUMBER 3-1 .
11-4-2019 [36]

OPAL RIDER/MV
STEPHEN LABIAK/ATTY. FOR DBT.

NO RULING.

8. 19-13376-A-13 **IN RE: OPAL RIDER**
SLL-2

MOTION TO WAIVE SECTION 1328 CERTIFICATE REQUIREMENT, SUBSTITUTE PARTY, AND FOR DISCHARGE OF DEBTOR OPAL RIDER AS TO DEBTOR
10-22-2020 [81]

OPAL RIDER/MV
STEPHEN LABIAK/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.

Annette Jimenez ("Movant"), the surviving daughter of Opal L. Rider ("Debtor"), the debtor in this Chapter 13 case, requests the court name Movant as the successor to the deceased Debtor and waive the § 1328 certification requirements. Doc. #81.

Upon the death of a debtor in Chapter 13, Federal Rule of Bankruptcy Procedure 1016 provides that the case may be dismissed or may proceed and be concluded in the same manner, so far as possible, as though the death had not occurred upon a showing that further administration is possible and in the best interest of the parties. Debtor died of natural causes on July 19, 2020. Doc. #86. Movant declares that she is the executor of Debtor's estate and qualified to represent Debtor's estate in the bankruptcy case. Doc. #83. Appointing Movant to be representative to proceed with case administration is in the best interest of the parties and creditors. No objections have been filed in response to this motion.

With respect to a waiver of Debtor's certification requirements for entry of discharge under 11 U.S.C. § 1328, Movant states that Debtor has no child or spousal support obligations, this is Debtor's sole bankruptcy case, and Debtor was never charged with or convicted of a felony. Doc. #83. Debtor failed to meet the post-petition financial education requirements before Debtor died.

Accordingly, Movant's application to be appointed representative of Debtor's estate for the further administration of this bankruptcy case is GRANTED. Movant's motion to waive § 1328 certification requirements is GRANTED.

9. 18-13980-A-13 **IN RE: JOAO VAZ**
TCS-2

MOTION TO MODIFY PLAN
10-20-2020 [46]

JOAO VAZ/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
RESPONSIVE PLEADING WITHDRAWN

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 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). The Chapter 13 trustee timely opposed this motion, but withdrew his opposition in consideration of terms agreeable to the debtors and put forth in a stipulation and proposed order filed December 1, 2020. Doc. ##63-65. 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.

This motion is GRANTED. The confirmation order shall be consistent with the proposed order marked Exhibit A, Doc. #64.

As a procedural matter, the Notice of Hearing filed in connection with the debtor's motion does not comply with LBR 9014-1(d)(3)(B)(i). The court urges counsel review the local rules to ensure compliance in future matters.

10. 18-13980-A-13 **IN RE: JOAO VAZ**
TCS-3

MOTION TO DISGORGE FEES
10-20-2020 [54]

JOAO VAZ/MV
TIMOTHY SPRINGER/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.

Joao Vaz ("Debtor") moves to disgorge fees of $800.00 paid to his prior counsel, Thomas O. Gillis, on the grounds that Mr. Gillis was paid $4,000.00 for the entire chapter 13 case prior to the filing of the Debtor's Chapter 13 bankruptcy case, and post-confirmation work has yet to be performed that Mr. Gillis cannot perform because Mr. Gillis has been suspended for two years from the practice of law. Doc. #54.

Mr. Gillis elected to be paid pursuant to LBR 2016-1(c) and received $4,000.00 prior to the fling of Debtor's bankruptcy case. Doc. #3. Effective February 15, 2020, Mr. Gillis was suspended from the practice of law by the State Bar of California. In re Cervantes, 617 B.R. 687, 689 (Bankr. E.D. Cal. 2020). A four-phase template has been created for determining appropriate fees paid to Mr. Gillis based for cases that were not complete at the time of Mr. Gillis' suspension ("Fee Rubric"). Cervantes, 617 B.R. at 698. The Fee Rubric has been adopted by all bankruptcy judges in this district. See In the Matter of Thomas Oscar Gillis, Fee Rubric Proceedings, Misc. File No. 20-202, Doc. #234.

Here, Debtor's Chapter 13 plan was confirmed on December 6, 2018. Doc. #23. The Notice of Filed Claims was filed on April 15, 2019. Doc. #27. However, the plan is still pending and discharge, closure certifications, and necessary lien clearances have not been completed. Thus, this case fits within Phase III of the Fee Rubric. Accordingly, the court finds that 80% of the $4,000.00 fixed fee Debtor paid to Mr. Gillis has been earned, or $3,200.00, and $800.00 should be returned to Debtor.

The motion is GRANTED. Within 30 days of the entry of an order granting this motion, Mr. Gillis shall disgorge $800.00 to Debtor and file a declaration with the court in this case confirming that Mr. Gillis has disgorged $800.00 to Debtor.

As a procedural matter, the Notice of Hearing filed in connection with the debtor's motion does not comply with LBR 9014-1(d)(3)(B)(i). The court urges counsel review the local rules to ensure compliance in future matters.

11. 18-11292-A-13 **IN RE: ANGEL PEREZ**
TCS-8

MOTION TO MODIFY PLAN
10-30-2020 [143]

ANGEL PEREZ/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to January 14, 2021 at 9:30 a.m.

ORDER: The court will issue an order.

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). The Chapter 13 trustee ("Trustee") filed an objection to the debtor's motion to modify the Chapter 13 plan. Tr.'s Opp'n, Doc. #150. Unless this case is voluntarily converted to Chapter 7, dismissed, or the oppositions to confirmation are withdrawn, the debtor shall file and serve a written response no later than December 24, 2020. The response shall specifically address each issue raised in the objections to confirmation, state whether the issues are disputed or undisputed, and include admissible evidence to support the debtor's position. Trustee shall file and serve a reply, if any, by January 7, 2021.

If the debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than January 7, 2021. If the debtor does not timely

file a modified plan or a written response, this motion will be denied on the grounds stated in Trustee's opposition without a further hearing.

As a procedural matter, the Notice of Hearing filed in connection with the debtor's motion does not comply with LBR 9014-1(d)(3)(B)(i). The court urges counsel review the local rules to ensure compliance in future matters.

12. 20-11493-A-13 **IN RE: BRENDA KERR**
PLG-1

MOTION TO CONFIRM PLAN
10-15-2020 [25]

BRENDA KERR/MV
STEVEN ALPERT/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 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(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.

This motion is GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

1. 19-11901-A-7 **IN RE: ARMANDO CRUZ**
19-1095

CONTINUED STATUS CONFERENCE RE: COMPLAINT
8-12-2019 [1]

STRATEGIC FUNDING SOURCE, INC. V. CRUZ
JARRETT OSBORNE-REVIS/ATTY. FOR PL.

NO RULING.

2. 19-11901-A-7 **IN RE: ARMANDO CRUZ**
19-1095 BN-5

MOTION FOR ENTRY OF DEFAULT JUDGMENT
10-28-2020 [114]

STRATEGIC FUNDING SOURCE, INC. V. CRUZ
JARRETT OSBORNE-REVIS/ATTY. FOR MV.

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.

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 the defendant to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the default of the defendant to this motion is entered. 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 not done here.

Strategic Funding Source, Inc. D/B/A Kapitus, a New York Corporation ("Plaintiff") commenced this adversary proceeding by filing its complaint on August 12, 2019 (the "Complaint"). Adv. Proc. No. 19-01095, Doc. #1. The allegations set forth in the Complaint arise out of a loan agreement between Plaintiff and Armando Cervantes Cruz ("Defendant"), a Chapter 7 debtor, whereby Plaintiff agreed to loan Defendant $75,000 (the "Loan Agreement"), and Defendant agreed to repay Plaintiff $98,250.

Defendant failed to respond to the Complaint. On September 13, 2019, one month after filing the Complaint, Plaintiff filed a request for entry of default (Doc. #9) and, on September 20, 2019, the United States Bankruptcy Court Clerk filed the Entry of Default. Doc. #11. Plaintiff moved for default judgment on November 4, 2019. Doc. #17. The court determined that the elements of Plaintiff's claims had not been demonstrated and, on March 11, 2020, denied

Plaintiff's motion for default judgment without prejudice, but gave Plaintiff the opportunity to bolster its claims through limited early discovery. Orders, Doc. ##64, 72; Court Audio, Doc. #75 (attached audio file). The court authorized limited discovery. Doc. #74. Since then, Plaintiff has served discovery requests on Defendant, to which Defendant has never responded. Pl.'s Mem., Doc. #102; Status Report, Doc. #84. Plaintiff has not moved for an order compelling discovery, and there is no evidence that Plaintiff noticed Defendant's deposition.

An appearance was first made on Defendant's behalf at a hearing on August 19, 2020, at which time Defendant's counsel represented that he had been retained the night before and Defendant planned to move to set aside the entry of default and resolve the adversary proceeding on its merits. Court Audio, Doc. #90 (attached audio file). On September 24, 2020, Defendant moved to set aside the entry of default under Fed. R. Civ. P. 55(c). Def.'s Mot. to Set Aside Default, Doc. #96.

In a declaration filed in connection with Defendant's motion to set aside the entry of default, Defendant states that he received notice of this adversary proceeding in "late 2019" but did not understand the papers because Defendant does not speak English. Decl. of Armando Cervantes Cruz, ¶ 28, Doc. #98. In January 2020, confused as to the meaning of the papers received, Defendant telephoned his bankruptcy attorney's office and spoke to the secretary. Cruz Decl. ¶ 30, Doc. #98. Defendant was told by the secretary that the papers received were "a lawsuit against [him]." Cruz Decl., ¶30, Doc. #98. Defendant took no action after receiving this information, despite previously following the advice from the bankruptcy attorney's secretaries in past matters. Cruz Decl. ¶ 22, Doc. #98.

Some months later, on August 12, 2020, Defendant and Plaintiff's counsel spoke on the telephone. Decl. of Jarrett S. Osborne-Revis ¶ 20, Doc. #103. In addition to receiving notice of the adversary proceeding against him, Defendant admitted to Plaintiff's counsel that he received Plaintiff's request for default, default judgment motion, early discovery motion, and document demands. Osborne-Revis Decl. ¶ 20, Doc. #103. During that conversation, Defendant told Plaintiff's counsel that "he could not participate in the case because 'he does not have a lawyer.'" Osborne-Revis Decl. ¶ 20, Doc. #103. Plaintiff's counsel informed Defendant that Plaintiff would "seek a default judgment against him for the total amount of [Plaintiff's] pre-petition claim.'" Id. Defendant "responded 'ok' and then hung up [the telephone]." Id. Defendant has yet to respond to any of Plaintiff's pleadings or discovery requests. The only docket entry from Defendant in this adversary proceeding is a motion to set aside the entry of default and supporting papers. No response to Plaintiff's motion for dispositive sanctions has been filed.

Plaintiff argues that Federal Rule of Civil Procedure ("Civil Rule") 37, made applicable to this adversary proceeding through Federal Rule of Bankruptcy Procedure ("Bankruptcy Rule") 7037, as well as Ninth Circuit case law create a framework which would enable this court to enter a default judgment against Defendant as a sanction for Defendant's failure to respond to discovery.

Default Judgment as Dispositive Sanction

Civil Rule 37 permits the court "in its discretion, to enter a default judgment against a party who fails to comply with an order compelling discovery." Comput. Task Grp., Inc. v. Brotby, 364 F.3d 1112, 1115 (9th Cir. 2004). "Under Rule 37(b)(2)(C), if a party fails to obey an order to provide discovery, the court may dismiss the action, 'rendering a judgment by default against the disobedient party.'" Allen v. Exxon Corp. (In re Exxon Valdez), 102 F.3d 429,

432 (9th Cir. 1996) (quoting Fed. R. Civ. P. 37(b)(2)(vi)). Dispositive sanctions, such as default judgment, are "authorized only in extreme circumstances and only where the violation is due to willfulness, bad faith, or fault of the party." Id. (citations omitted); Comput. Task Grp., 364 F.3d at 1115.

The court is inclined to deny this motion because granting a default judgment as a dispositive sanction under Bankruptcy Rule 7037 at this time is premature. See generally, Exxon Valdez, 102 F.3d at 432 (upholding dispositive sanctions where "[t]he history of these proceedings reflects a virtually total refusal by appellants over a period of more than two years to comply with discovery obligations and orders."); Comput. Task Grp., 364 F.3d at 1115 (upholding dispositive sanctions where the disobeying party "engaged in a consistent, intentional, and prejudicial practice of obstructing discovery by not complying with repeated court orders and not heeding multiple court warnings." (Citations omitted.)). The cases cited by Plaintiff correctly state the standard courts should apply when considering dispositive sanctions under Rule 37, but the facts of this adversary proceeding do not warrant such relief.

In Jorgensen v. Cassiday, 320 F.3d 906 (9th Cir. 2002), the Ninth Circuit found no abuse of discretion when the trial court sanctioned the defendants with default judgment, but only after an order compelling discovery. Jorgensen, 302 F.3d at 910. There, the defendants not only failed to comply with the discovery order but also refused a subsequent offer by the court, in lieu of sanctions, to produce the requested documents within one week. Id. at 911.

Similarly, in Valley Eng'rs v. Elec. Eng'g Co., 158 F.3d 1051 (9th Cir. 1998), dispositive sanctions were appropriate after the disobeying party failed to comply with a court order compelling discovery and after the court imposed monetary sanctions. Valley Eng'rs, 158 F.3d at 1056. In that case, there was "evidence of a shocking betrayal of obligations to the court and opposing counsel" ultimately justifying dispositive sanctions, for which the disobeying party was undoubtedly on notice. Id. at 1055-57.

In Hyde & Drath v. Baker, 24 F.3d 1162 (9th Cir. 1994), the point is made in the very first line of the opinion: "We must decide whether the district court properly dismissed a complaint and imposed sanctions because of repeated failure to attend scheduled depositions." Hyde & Drath, 24 F.3d at 1165. There, dispositive sanctions were proper after the disobeying parties disregarded numerous noticed depositions and discovery orders and failed to pay monetary sanctions. Id. at 1165-66.

Defendant's conduct in this adversary proceeding to date does not warrant entry of a default judgment as sanctions under Bankruptcy Rule 7037. Unlike the cases discussed above, Plaintiff here never moved for an order compelling the production of documents and has not provided any evidence that Defendant's deposition was ever noticed. Defendant's acknowledgment of receipt of the discovery requests, and his refusal to respond, does not justify dispositive sanctions without some further intermediate action by the court.

Accordingly, Plaintiff's motion is DENIED.

3. 19-11901-A-7 **IN RE: ARMANDO CRUZ**
19-1095 SL-1

CONTINUED MOTION TO SET ASIDE
9-24-2020 [96]

STRATEGIC FUNDING SOURCE, INC. V. CRUZ
SCOTT LYONS/ATTY. FOR MV.

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.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). Strategic Funding Source, Inc. D/B/A Kapitus, a New York Corporation ("Plaintiff") timely filed opposition and requested the hearing on this motion be continued to December 10, 2020, to track with Plaintiff's motion for dispositive sanctions. Doc. #121. Armando Cervantes Cruz ("Defendant") made no response to the request for a continuance, and the court continued the hearing to December 10, 2020 at 11:00 a.m. Doc. #129.

FACTUAL BACKGROUND

Plaintiff commenced this adversary proceeding by filing its complaint on August 12, 2019 (the "Complaint"). Adv. Proc. No. 19-01095, Doc. #1. The allegations set forth in the Complaint arise out of a loan agreement between Plaintiff and Defendant, a Chapter 7 debtor, whereby Plaintiff agreed to loan Defendant $75,000 (the "Loan Agreement), and Defendant agreed to repay Plaintiff $98,250. The parties also executed a contemporaneous security agreement conveying to Plaintiff a security interest in Defendant's identified personal property. Compl. § IV, Doc. #1.

Defendant failed to respond to the Complaint. On September 13, 2019, one month after filing the Complaint, Plaintiff filed a request for entry of default (Doc. #9) and, on September 20, 2019, the United States Bankruptcy Court Clerk filed the Entry of Default. Doc. #11. Plaintiff moved for default judgment on November 4, 2019. Doc. #17. The court determined that the elements of Plaintiff's various § 523(a) claims had not been demonstrated and, on March 11, 2020, denied Plaintiff's motion for default judgment without prejudice, but gave Plaintiff the opportunity to bolster its claims through limited early discovery. Orders, Doc. ##64, 72; Court Audio, Doc. #75 (attached audio file). Since then, Plaintiff has served discovery requests related to its § 532 claims on Defendant, to which Defendant has never responded. Pl.'s Mem., Doc. #102; Status Report, Doc. #84.

An appearance was first made on Defendant's behalf at a hearing on August 19, 2020, at which time Defendant's counsel represented that he had been retained the night before and Defendant planned to move to set aside the entry of default and resolve the adversary proceeding on its merits. Court Audio, Doc. #90 (attached audio file). On September 24, 2020, Defendant moved to set aside the entry of default under Fed. R. Civ. P. 55(c) ("Motion"). Def.'s Mot. to Set Aside Default, Doc. #96.

Defendant states that he received notice of this adversary proceeding in "late 2019" but did not understand the papers because Defendant does not speak English. Decl. of Armando Cervantes Cruz, ¶ 28, Doc. #98. In January 2020, confused as to the meaning of the papers received, Defendant telephoned his bankruptcy attorney's office and spoke to the secretary. Cruz Decl. ¶ 30, Doc. #98. Defendant was told by the secretary that the papers received were "a lawsuit against [him]." Cruz Decl., ¶30, Doc. #98. Defendant took no action after receiving this information, despite previously following the advice from the bankruptcy attorney's secretaries in past matters. Cruz Decl. ¶ 22, Doc. #98.

Some months later, on August 12, 2020, Defendant and Plaintiff's counsel spoke on the telephone. Decl. of Jarrett S. Osborne-Revis ¶ 20, Doc. #103. In addition to receiving notice of the adversary proceeding against him, Defendant admitted to Plaintiff's counsel that he received Plaintiff's request for default, default judgment motion, early discovery motion, and document demands. Osborne-Revis Decl. ¶ 20, Doc. #103. During that conversation, Defendant told Plaintiff's counsel that "he could not participate in the case because 'he does not have a lawyer.'" Osborne-Revis Decl. ¶ 20, Doc. #103. Plaintiff's counsel informed Defendant that Plaintiff would "seek a default judgment against him for the total amount of [Plaintiff's] pre-petition claim.'" Id. Defendant "responded 'ok' and then hung up [the telephone]." Id. Defendant has yet to respond to any of Plaintiff's pleadings or discovery requests. The only docket entry from Defendant in this adversary proceeding is this Motion to set aside the entry of default and supporting papers.

In the papers supporting this Motion, Defendant asserts that he entered into the Loan Agreement planning to use the funds to purchase supplies needed to operate Defendant's agriculture business. Cruz Decl. ¶ 3, Doc. #98. The money Defendant borrowed from Plaintiff "was gone within two weeks . . . to cover [Defendant's] labor costs." Cruz Decl. ¶ 11, Doc. #98. Defendant states that he "did not lie or misrepresent anything at all" to Plaintiff's loan officer when filling out the paperwork for the Loan Agreement, and that he "answered all of her questions honestly and truthfully." Cruz Decl. ¶¶ 6-7, Doc. #98. Defendant also claims that Plaintiff's loan officer, who translated the loan documents for Defendant, never asked Defendant about taxes. Cruz. Decl. ¶ 8, Doc #98. Defendant says he did not make any payments towards the Loan Agreement because Defendant's business "collapsed" shortly after entering into the Loan Agreement. Cruz Decl. ¶ 10, Doc. #98. At that time, Defendant's business manager handled the payments on all business debts. Cruz Decl. ¶ 13, Doc. #98. Defendant asserts that the business manager failed to make the necessary tax, social security, and Loan Agreement payments, and that Defendant did not become aware of the missed payments "until about four to five months after receiving the loan[.]" Cruz Decl. ¶ 13, Doc. #98.

Plaintiff opposes Defendant's Motion. Pl.'s Mem., Doc. #102.

DISCUSSION

Federal Rule of Bankruptcy Procedure 7055 applies Federal Rule of Civil Procedure ("Rule") 55 to adversary proceedings. Rule 55(c) provides that an entry of default may be set aside for good cause. See Hawaii Carpenters' Tr. Funds v. Stone, 794 F.2d 508, 513 (9th Cir. 1986).

"Rule 55(c) frees a court considering a motion to set aside a default entry from the restraint of Rule 60(b) and entrusts determination to the discretion of the court." Hawaii Carpenters' Tr. Funds, 794 F.2d at 513. The rules for determining when a default should be set aside are solicitous towards movants

whose actions leading to the default were taken without the benefit of legal representation. United States v. Mesle, 615 F.3d 1085, 1089 (9th Cir. 2010).

The Ninth Circuit has identified three factors, known as the Falk factors, important to conducting a Rule 55(c) good-cause analysis: (1) the moving party's culpable conduct, (2) prejudice to the non-moving party, and (3) the moving party's meritorious defenses. Howell v. Schubert, No. 19-cv-0266, 2020 U.S. Dist. LEXIS 120010, at *2 (E.D. Cal. July 8, 2020) (citing Franchise Holding II, LLC v. Huntington Rests. Group, Inc., 375 F.3d 922, 925-26 (9th Cir. 2004)).

The moving party bears the burden of demonstrating that these factors favor setting aside the entry of default. TCI Group Life Ins. Plan v. Knoebber, 244 F.3d 691, 696 (9th Cir. 2001) (citing Cassidy v. Tenorio, 856 F.2d 1412, 1415 (9th Cir. 1988)). However, the factors are disjunctive, "such that a finding that any one of these factors is true is sufficient reason for the [bankruptcy] court to refuse to set aside the default." Mesle, 615 F.3d at 1091.

I. Moving Party's Culpable Conduct

"The usual articulation of the governing standard [of culpable conduct] is that 'a defendant's conduct is culpable if he has received actual or constructive notice of the filing of the action and *intentionally* failed to answer.'" TCI Group, 244 F.3d at 697 (citing Alan Neuman Prods., Inc. v. Albright, 862 F.2d 1388, 1392 (9th Cir. 1988)) (emphasis in original). In this context, intentional means "something more like . . . 'willful, deliberate, or evidence of bad faith.'" Id. (quoting Am. Alliance Ins. Co. v. Eagle Ins. Co., 92 F.3d 57, 61 (2d Cir. 1996)).

"Neglectful failure to answer [for] which the defendant offers a credible, good faith explanation negating any intention to take advantage of an opposing party, interfere with judicial decisionmaking, or otherwise manipulate the legal process is not 'intentional' . . . [and] not *necessarily* . . . culpable or inexcusable." TCI Group, 244 F.3d at 697-98 (emphasis in original). This is the proper standard for determining culpable conduct when the moving party is not a lawyer and is unrepresented at the time of the default. Mesle, 615 F.3d at 1093.

The court finds Defendant's conduct was culpable under applicable Ninth Circuit authority. Defendant has not offered a credible, good faith explanation negating any intention to take advantage of an opposing party, interfere with judicial decisionmaking, or otherwise manipulate the legal process.

Although unrepresented by legal counsel at the time he received the complaint in late 2019, Defendant soon learned that a lawsuit had been filed against him. Defendant nevertheless failed to retain legal counsel. Defendant subsequently received notice of Plaintiff's requests for default, default judgment, and discovery requests yet still had not retained legal counsel by August 2020.

In TCI Group, the court found that the defendant's conduct was not culpable "because of her exigent personal circumstances, . . . her lack of familiarity with legal matters," and because "her diligence in seeking to set aside the default judgment reveals no disrespect for the courts." TCI Group, 244 F.3d at 699. In Mesle, the court found the defendant's conduct was not culpable because, as a layman, the defendant "was ignorant of the law and unable to understand correctly his legal obligations . . . ." Mesle, 615 F.3d at 1093. Importantly, the defendant in Mesle mistakenly believed that he had properly

challenged the proceedings against him, and when he became aware of his misunderstanding, the defendant promptly hired a lawyer. Id. at 1092.

These cases are distinguishable from the facts at hand. Here, Defendant has not alleged any exigent personal circumstances justifying his failure to respond to any of the documents received. Unlike the defendants in TCI Group and Mesle, Defendant did not display any diligence in engaging legal representation, even after learning that a lawsuit was filed against him and receiving numerous papers related to the adversary proceeding demanding his response. Rather, Defendant indicated to Plaintiff's counsel that he was not responsible for engaging in the adversary proceeding because he did not have a lawyer. The basis of Plaintiff's complaint is that Defendant owes almost $100,000 to Plaintiff. The court holds that Defendant's failure to respond to any of Defendant's pleadings, motions or discovery requests rises to the level of bad faith. Defendant's conduct demonstrates an intent to interfere with judicial decisionmaking and delay the legal process.

II. Prejudice to Non-Moving Party

To be prejudicial, the plaintiff must suffer more than a delayed resolution of the adversary proceeding. TCI Group, 244 F.3d 691, 701 (discussing the higher standard of default judgment). The plaintiff's ability to pursue her claim must be hindered. Id. (citing Falk v. Allen, 739 F.2d 461, 463 (9th Cir. 1984)). "[T]he delay 'must result in tangible harm such as loss of evidence, increased difficulties of discovery, or greater opportunity for fraud or collusion." Greschner v. Cal. Dep't. of Corr. & Rehab., No. 2:15-cv-1663 MCE, 2020 U.S. Dist. LEXIS 160528, at *6 (E.D. Cal. Sept. 2, 2020) (quoting Thompson v. Am. Home Assur. Co., 95 F.3d 429, 433-34 (6th Cir. 1996)). Attorneys' fees can be a significant source of prejudice, and prejudice may also arise when the non-moving party has placed their entire theory of the lawsuit on the record in the context of the default and default prove-up. See Halper v. Cohen (In re Halper), BAP Nos. CC-18-1225-TaLS, CC-18-1226-TaLS, 2019 Bankr. LEXIS 1967, at *15-17 (B.A.P. 9th Cir. June 28, 2019).

The time, money, and energy spent by Plaintiff in this adversary proceeding are beyond the expenditures attendant to litigation generally and setting aside Defendant's default would prejudice Plaintiff. Defendant's default in this adversary proceeding was entered on September 20, 2019. Defendant's motion to set aside default was filed over a year later, on September 24, 2020. In the year before Defendant's motion, Plaintiff spent significant time and resources pursuing a default judgment. Plaintiff was unable to obtain a default judgment, at least in part, because Defendant refused to respond to any pleadings or motions and has refused to comply with discovery requests authorized by this court to enable Plaintiff to bolster its motion for default judgment. Further, there is no cure for the prejudice caused to Plaintiff if the court were to grant this Motion because Defendant has had the time needed to frame a defense without the restraints initially provided by the Federal Rules of Bankruptcy Procedure. The court holds that Plaintiff will be prejudiced if the Motion is granted.

III. Defendant's Meritorious Defenses

"All that is necessary to satisfy the 'meritorious defense' requirement is to allege sufficient facts that, if true, would constitute a defense: 'the question whether the factual allegation is true' is not to be determined by the court when it decides the motion to set aside the default." United States v. Aguilar, 782 F.3d 1101, 1107 (9th Cir. 2015) (quoting Mesle, 615 F.3d 1085, 1094) (punctuation omitted). "This approach is consistent with the principle that 'the burden on a party seeking to vacate a default judgment is not

extraordinarily heavy.'" Aguilar, 782 F.3d at 1107 (citing TCI Group, 244 F.3d at 700).

a. Section 523(a)(2)(A)

The first claim for relief in the Complaint alleges that Defendant's debt stemming from the Loan Agreement is non-dischargeable under 11 U.S.C. § 523(a)(2)(A) because Defendant directly obtained money and services from Plaintiff under false pretenses, a false representation, or actual fraud. Defendant disputes this claim.

"A creditor seeking to except a debt from discharge under § 523(a)(2)(A) based on false representations bears the burden of proving by a preponderance of the evidence five elements[.]" Cardenas v. Shannon (In re Shannon), 553 B.R. 380, 388 (B.A.P. 9th Cir. 2016). Those elements are: (1) misrepresentations, fraudulent omissions, or deceptive conduct by the debtor; (2) debtor's knowledge; (3) debtor's intent; (4) creditor's justifiable reliance; and (5) damage to the creditor. Id. Here, Defendant claims to have answered all the questions asked by Plaintiff's loan officer honestly and truthfully and provided only true and correct information. Defendant claims to have entered into the Loan Agreement to fund his business operations. Defendant may not have had the knowledge of the falsity or deceptiveness of his statements, and he may not have intended to deceive. The court holds Defendant has shown a meritorious defense as to 11 U.S.C. § 523(a)(2)(A).

b. Section 523(a)(2)(B)

Plaintiff's second claim for relief alleges that Defendant's debt stemming from the Loan Agreement is non-dischargeable under 11 U.S.C. § 523(a)(2)(B) because Defendant obtained money and services from Plaintiff by use of a statement in writing that is materially false respecting Defendant's financial condition, and Plaintiff reasonably relied on the writing. Defendant disputes this claim.

To prevail on an exception to discharge claim under § 523(a)(2)(B) the creditor must show: (1) it provided the debtor with money, property, services or credit based on a written representation of fact by the debtor as to the debtor's financial condition; (2) the representation was materially false; (3) the debtor knew the representation was false when made; (4) the debtor made the representation with the intention of deceiving the creditor; (5) the creditor relied on the representation; (6) the creditor's reliance was reasonable; and (7) damage proximately resulted from the representation. In re Siriani, 967 F.2d 302, 304 (9th Cir. 1992). Section 523(a)(2)(B) is similar to § 523(a)(2)(A) with the added requirement of a writing. Id. Defendant claims to have made only honest and truthful representations to Plaintiff through the loan officer, and Defendant believed the information given to the loan officer was true and correct. Defendant further contends that Plaintiff's loan officer never asked him about taxes and that he intended to use the proceeds to fund his business. The court holds Defendant has shown a meritorious defense as to 11 U.S.C. § 523(a)(2)(B).

c. Section 523(a)(4)

Section 524(a)(4) is based on either (1) fraud or defalcation while acting in a fiduciary capacity, or (2) embezzlement or larceny. Urological Grp., Ltd. v. Petersen (In re Petersen), 296 B.R. 766, 785 (Bankr. C.D. Ill. 2003). Plaintiff's third claim for relief alleges that Defendant's debt stemming from the Loan Agreement is non-dischargeable under 11 U.S.C. § 523(a)(4) because Defendant incurred the debt through embezzlement or larceny. Again, Defendant disputes this claim.

For purposes of § 523(a)(4), a bankruptcy court is not bound by the state law definitions of larceny or embezzlement but, rather, may follow federal common law. See Ormsby v. First Am. Title Co. (In re Ormsby), 591 F.3d 1199, 1206 (9th Cir. 2010) (fraud); In re Littleton, 942 F.2d 551, 555 (9th Cir. 1991) (embezzlement). Federal common law "defines larceny as a felonious taking of another's personal property with intent to convert it or deprive the owner of the same." Ormsby, 591 F.3d at 1206. "[A] 'felonious taking' refers to a situation in which a debtor comes into possession of property of another by unlawful means; it does not refer to the subsequent withholding of property from its alleged owner." In re Jenkins, BAP Nos. CC-14-1185-PaTaD, CC-14-1258-PaTaD (Cross-Appeals), 2015 Bankr. LEXIS 578 at *12 (B.A.P. 9th Cir. Feb. 20, 2015) (analyzing Ormsby). The court holds Defendant has shown a meritorious defense as to larceny under 11 U.S.C. § 523(a)(4) by stating that he received the funds through the Loan Agreement and that the Loan Agreement was not entered into through dishonest or untruthful means.

Embezzlement in the context of non-dischargeability requires three elements: (1) property rightfully in the possession of a nonowner; (2) nonowner's appropriation of the property to a use other than which it was entrusted; and (3) circumstances indicating fraud. Littleton, 942 F.2d at 555 (citations and punctuation omitted). The court holds Defendant has shown a meritorious defense as to embezzlement under 11 U.S.C. § 523(a)(4) by stating that the funds received from Plaintiff (funds to be used for business operations) were used to fund Defendant's business operations.

d. Sections 523(a)(6)

Plaintiff's final claim for relief alleges that Defendant's debt stemming from the Loan Agreement is non-dischargeable under 11 U.S.C. § 523(a)(6) because Defendant obtained the debt through willful and malicious conduct that damaged Plaintiff. Defendant disputes this claim.

An intentional breach of contract "accompanied by tortious conduct which results in willful and malicious injury" will except the resulting debt from discharge. Petralia v. Jercich (In re Jercich), 238 F.3d 1202, 1205 (9th Cir. 2001). "[T]o be excepted from discharge under § 523(a)(6), a breach of contract must be accompanied by some form of 'tortious conduct' that gives rise to 'willful and malicious injury.'" Id. at 1206; see also Barboza v. New Form, Inc. (In re Barboza), 545 F.3d 702 (9th Cir. 2008) (discussing willful and malicious injury requirements under § 523(a)(6)). Defendant claims that he failed to make loan payments because his business failed, and that he was honest and truthful through the Loan Agreement application process. The court holds this may be a meritorious defense under 11 U.S.C. § 523(a)(6).

Ultimately, even though Defendant presents meritorious defenses, such a showing is insufficient to establish good cause to set aside the entry of default because Defendant engaged in culpable conduct and granting the Motion will prejudice Plaintiff.

CONCLUSION

Good cause does not exist to set aside the entry of default in this adversary proceeding. Regardless of any meritorious defenses Defendant may have, setting aside the entry of default would prejudice Plaintiff and reward Defendant's culpable conduct.

Accordingly, Defendant's Motion is DENIED.

4. 18-14207-A-7 **IN RE: ELMER/KATHLEEN FALK**
20-1057 DW-1

MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL
11-12-2020 [12]

SALVEN V. MOORE ET AL
MATTHEW OLSON/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted with leave to amend

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

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

On November 12, 2020, Defendants Tanya Moore ("Moore"), The Moore Law Firm, Professional Corporation ("Moore Law Firm"), and Kathleen Falk, Trustee of the Probate Estate of Elmer LeRoy Falk ("Probate Trustee") (collectively, "Defendants") filed a motion ("Motion") to dismiss the claims of Plaintiff James E. Salven, Chapter 7 Trustee of Elmer LeRoy Falk, Jr. and Kathleen Elizabeth Falk ("Plaintiff"), pursuant to Federal Rule of Civil Procedure 12(b)(6), as incorporated by Federal Rule of Bankruptcy Procedure 7012. By the Motion, Defendants seek to dismiss all eight claims for relief pled in the complaint filed by Plaintiff on September 14, 2020 ("Complaint"). Doc. #1. In essence, Defendants contend that each of the legal claims asserted by Plaintiff requires the transfer of property of either the debtors or the estate and, because the transfers involve property of a law firm in which one of the debtors was a sole shareholder, there is no property of a debtor or the estate to support any of the claims for relief. Plaintiff filed a timely opposition. Doc. #16. Defendants timely replied. Doc. #18.

For the reasons set forth below, the Motion will be GRANTED WITH LEAVE TO AMEND with respect to all claims for relief because the Complaint does not adequately set forth sufficient factual allegations, accepted as true for purposes of the Motion, to state a claim for each claim for relief.

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citation omitted). "In considering a Fed. R. Civ. P. 12(b)(6) motion to dismiss for failure to state a claim for relief, the court accepts as true all material facts alleged in the complaint and draws all reasonable inferences in favor of the plaintiff. The motion to dismiss is granted only if no set of facts can be established to entitle the plaintiff to relief." Enron Corp. v. Credit Suisse First Boston Int'l (In re Enron Corp.), 328 B.R. 58, 64 (Bankr. S.D.N.Y. 2005) (citations omitted).

The Complaint alleges that prior to filing his chapter 7 bankruptcy petition and subsequent death, debtor Elmer LeRoy Falk ("Falk") was the sole shareholder of Mission Law Firm, a Professional Corporation ("Mission I"). Complaint ¶ 11. At all relevant times in the Complaint, Falk served as president and chief

executive officer of Mission I and Moore served as Secretary and Chief Financial Officer. Id. Mission I prosecuted civil rights and consumer protection cases on behalf of its clients. Id. at ¶ 12. When cases would resolve, Mission I would pursue attorneys' fees awards and costs permitted by statute, with such fees and costs paid by the defendants in those actions directly to Mission I. Id.

A certificate of dissolution for Mission I was filed with the California Secretary of State on November 8, 2018, that was dated October 4, 2018. Complaint ¶ 16. On November 1, 2018, an amendment to the articles of incorporation for Moore Law Firm was filed with the California Secretary of State changing the name of Moore Law Firm to "Mission Law Firm, a Professional Corporation" ("Name Change"). Id. at 17. This document was dated October 4, 2018. Id.

On October 16, 2018, Falk and Kathleen Elizabeth Falk filed a chapter 7 bankruptcy petition listing shares held in Mission I and indicated that the corporation was in the process of dissolving and had no assets. Complaint ¶ 13.

Plaintiff asserts that, post-petition, through the Name Change, Moore changed the name of her own law firm into a second Mission Law Firm ("Mission II") in order to receive monies from cases that were the property of Mission I and Falk, thereby converting those monies to her own firm. Complaint ¶ 18. On or about December 20, 2018, Moore, as president and secretary of Mission II, amended the law firm's articles of incorporation and reverted the name of Mission II to Moore Law Firm. Id. at ¶ 19. Plaintiff asserts that during the short period of time that Mission II existed, Defendants worked to change attorney-client agreements and judgments entered in favor of Mission I to Moore Law Firm. Id. at ¶ 22. Plaintiff asserts that Mission I was due substantial sums of money as attorney fees from cases that resolved post-petition, but those monies were diverted to Moore and Moore Law Firm as Mission II. Id. at ¶¶ 20, 22. Plaintiff asserts that at all relevant times, Falk and Moore were being pursued by creditors in other forums. Id. at ¶ 21.

Determination of the Motion depends upon what, if any, interest either Falk or his bankruptcy estate had in monies owed to Mission I from cases that settled post-petition. Defendants correctly point out that Mission I is not the debtor in this bankruptcy case. Rather, Falk is the debtor in this chapter 7 bankruptcy case. Mission I was in the process of dissolving at the time Falk filed his chapter 7 bankruptcy petition. Under California law regarding corporations in dissolution, Falk may have had rights as the sole shareholder of Mission I, as of the time he filed his chapter 7 bankruptcy petition, to distributions of Mission I's assets after all known debts and liabilities of Mission I had been paid or adequately provided for. Cal. Corp. Code § 2004. However, the Complaint does not assert that all of Mission I's debts and liabilities were paid or adequately provided for such that Falk had an interest in monies owed to Mission I as of the petition date. This failure means that there is no alleged transfer of property of Falk or the Falks' bankruptcy estate to support the allegations of fraudulent transfer (Second through Fifth Claims for Relief), avoidance of post-petition transfer (Sixth Claim for Relief), turnover of property of the estate (Seventh Claim for Relief) and declaratory relief regarding property of the estate (Eighth Claim for Relief).

Finally, the First Claim for Relief asserts recovery of preferences pursuant to 11 U.S.C. § 547 against Moore and Moore Law Firm. The elements of a preference are: (i) a transfer, (ii) of the debtor's property; (iii) to or for a creditor's benefit; (iv) on account of an antecedent debt; (v) within 90 days prior to the filing of the petition (or within a year if the transferee is an insider); (vi) made which the debtor was insolvent; (vii) that prefers the

creditor receiving the transfer. 11 U.S.C. § 547(b). Here, the Complaint fails to allege that (a) Moore or Moore Law Firm were creditors of Falk, (b) Falk transferred his property to Moore or Moore Law Firm on account of an antecedent debt that Falk owed to Moore or Moore Law Firm, and (c) Moore or Moore Law Firm received more from Falk than they would have received from Falk's chapter 7 case. Accordingly, the Complaint, as pled, does not assert sufficient facts to support a claim for relief for recovery of preferences against Moore and Moore Law Firm.

Additionally, the Complaint alleges that Moore is an insider of Mission I, Falk's wholly owned corporation, and Falk and Moore transferred substantial sums of money to Moore and Moore Law Firm within the one year prior to October 16, 2018. Complaint ¶ 23. However, Mission I is not the debtor in this bankruptcy case; Falk is the debtor. Under Bankruptcy Code section 101(31)(A), insiders of an individual debtor include: "(i) relative of the debtor or of a general partner of the debtor; (ii) partnership in which the debtor is a general partner; (iii) general partner of the debtor; or (iv) corporation of which the debtor is a director, officer , or person in control[.]" 11 U.S.C. § 101(31)(A). The Complaint does not allege sufficient facts to support the claim that either Moore or Moore Law Firm are insiders of Falk.

Because Plaintiff may be able to assert factual allegations that would support claims for relief that rely on Falk's interest in Mission I's assets as the sole shareholder of Mission I after all of Mission I's creditors were paid or adequately provided for, as well as missing factual allegations with respect to the first claim for relief for recovery of preferences, the Motion will be GRANTED WITH LEAVE TO AMEND. Plaintiff will have until January 11, 2021, to file an amended complaint. If an amended complaint is not filed on or before January 11, 2021, the adversary proceeding will be dismissed as of January 12, 2021.

5. 19-15321-A-7 **IN RE: MARIA RAMIREZ**
20-1037

CONTINUED STATUS CONFERENCE RE: COMPLAINT
6-9-2020 [1]

FEAR V. RAMIREZ ET AL
KELSEY SEIB/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to February 11, 2021, at 11:00 a.m.

ORDER: The court will issue an order.

Pursuant to the parties' joint status conference statement, the status conference will be continued to February 11, 2021 at 11:00 a.m. Doc. #30.

The parties shall file a joint status conference statement not later than February 4, 2021.

6. 18-13935-A-7 **IN RE: NICOLAS QUIROZ**
19-1093

CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT
7-29-2019 [1]

QUIROZ V. NAVIENT SOLUTIONS, LLC
JEFFREY MEISNER/ATTY. FOR PL.
DISMISSED 11/2/20, CLOSED

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

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED.

This adversary proceeding was dismissed on November 2, 2020. Doc. #43.

7. 19-12047-A-7 **IN RE: ROBERT FLETCHER**
19-1097 DRJ-3

MOTION TO COMPEL
11-25-2020 [76]

FLETCHER V. FLETCHER ET AL
DAVID JENKINS/ATTY. FOR MV.

NO RULING.

8. 19-12047-A-7 **IN RE: ROBERT FLETCHER**
19-1097 DRJ-4

MOTION TO HAVE REQUESTS FOR ADMISSION DEEMED ADMITTED AND/OR MOTION TO COMPEL
11-25-2020 [92]

FLETCHER V. FLETCHER ET AL
DAVID JENKINS/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted as to alternative relief.

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 the scheduling order dated May 15, 2020 (Doc. #47) ("Scheduling Order"). Pursuant to the Scheduling Order, written opposition to the motion was to be filed on or before December 2, 2020. The failure of the defendant to file written opposition at least 7 days prior to the hearing as

required by Scheduling Order 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 default of the defendant to this motion is entered.

Robert John Fletcher ("Defendant") is a Chapter 7 debtor and the defendant in this adversary proceeding that seeks to find certain debt, arising from Defendant's role as trustee for the Robert John Fletcher and Diane L. Fletcher Family Revocable Trust of 2007 (the "Trust"), nondischargeable. The adversary proceeding was commenced on August 19, 2019, and is currently in the discovery phase. Russell Remington Fletcher ("Plaintiff") moves this court for an order deeming certain of Defendant's responses to requests for admission admitted, or, in the alternative, for an order compelling Defendant file amended answers. Doc. #97. The responses at issue were made in connection with the requests for admission dated July 8, 2020 ("Requests for Admission"), specifically responses to requests numbered 12, 13, 17 through 32, 34, 35, 38, 39, 41, 42, and 43 (collectively, the "Responses"). Doc. #97. The court is inclined to grant Plaintiff's alternative request for relief.

As an initial matter, in Plaintiff's 9014-2 Statement (Doc. #96), request number 33 appears to be incorrectly labeled. The text stated as request number 33 is actually the text of request number 34, to which Defendant made the boilerplate objection described below. See Ex. 7, Doc. #99. The court will consider this motion to include request number 34 and Defendant's response thereto.

The majority of Defendant's Responses are objections grounded on Defendant's failure to complete an accounting related to his role as trustee. Doc. #96. The Requests for Admission, however, ask Defendant to admit the authenticity of various forms (often completed by Defendant) or admit that the Trust received certain funds while Defendant was trustee. Doc. ##96, 97. Defendant did not respond to requests numbered 41, 42, and 43. Doc. #96.

Federal Rule of Civil Procedure ("Rule") 36 is incorporated to this adversary proceeding by Federal Rule of Bankruptcy Procedure 7036. Rule 36 governs requests for admissions and provides that "[i]f 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 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). The party requesting the admission "may move to determine the sufficiency of an answer or objection," and the court, "[o]n finding that an answer does not comply with this rule . . . may order either that the matter is admitted or that an amended answer be served." Fed. R. Civ. P. 36(a)(6).

Certain requirements must be met for proper objections and denials under Rule 36:

> A denial must fairly respond to the substance of the matter; and when good faith requires that a party qualify an answer or deny only a part of a matter, the answer must specify the part admitted and qualify or deny the rest. The answering party may assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that it has made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny.

Fed. R. Civ. P. 36(4). However, "[e]ven when a party's answer does not include such a statement, and thus fails to comply with the literal requirements of the Rule, courts generally order an amended answer rather than deem the matter

admitted." Asea, Inc. v. S. Pac. Transp. Co., 669 F.2d 1242, 1246 (9th Cir. 1981). The court "should ordinarily first order an amended answer, and deem the matter admitted only if a sufficient answer is not timely filed," although the decision is ultimately left to the discretion of the court. Id. at 1247.

Responses to Requests for Admission numbered 12, 13, 17 through 32, 34, 35, 38, and 39 do not comply with Rule 36. The objections assert that Defendant has yet to complete an accounting, which presumably means that Defendant lacks the information required to admit or deny the request for admission. However, Defendant's objections do not state that a reasonable inquiry has been made or that the information available to Defendant is insufficient to form an answer. As Plaintiff points out, Defendant is in custody and control of many of the documents Defendant was asked to authenticate and Defendant has personal knowledge of the matters.

Accordingly, Plaintiff's motion for an order compelling amended answers is GRANTED. Defendant shall file and serve amended responses to Requests for Admission numbers 12, 13, 17 through 32, 34, 35, 38, and 39 no later than January 15, 2020. Failure to do so will result in an order deeming each of the enumerated matters admitted and further sanctions as this court deems appropriate under Rule 37(b).

Requests for Admission numbers 41, 42, and 43, to which Defendant failed to answer or object, are deemed admitted pursuant to Rule 36(a)(3).

9. 19-12047-A-7 **IN RE: ROBERT FLETCHER**
19-1097 DRJ-5

MOTION TO COMPEL
11-25-2020 [84]

FLETCHER V. FLETCHER ET AL
DAVID JENKINS/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 the scheduling order dated May 15, 2020 (Doc. #47) ("Scheduling Order"). Pursuant to the Scheduling Order, written opposition to the motion was to be filed on or before December 2, 2020. The failure of the defendant to file written opposition at least 7 days prior to the hearing as required by Scheduling Order 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 default of the defendant to this motion is entered.

Robert John Fletcher ("Defendant") is a Chapter 7 debtor and the defendant in this adversary proceeding that seeks to find certain debt, arising from Defendant's role as trustee for the Robert John Fletcher and Diane L Fletcher Family Revocable Trust of 2007 (the "Trust"), nondischargeable. The adversary proceeding was commenced on August 19, 2019, and is currently in the discovery

phase. Russell Remington Fletcher ("Plaintiff") moves this court for an order compelling Defendant provide additional responses to interrogatories. Doc. #88.

The discovery process is subject to the overriding limitation of good faith. Asea, Inc. v. S. Pac. Transp. Co., 669 F.2d 1242, 1246 (9th Cir. 1981). "Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case . . . . Information within this scope of discovery need not be admissible in evidence to be discoverable." Fed. R. Civ. P. 26(b)(1), made applicable in adversary proceedings by Fed. R. Bankr. P. 7026. "An interrogatory may relate to any matter that may be inquired into under Rule 26(b)." Fed. R. Civ. P. 33(a)(2), made applicable in adversary proceedings by Fed. R. Bankr. P. 7033.

Federal Rule of Bankruptcy Procedure 7037 makes Federal Rule of Civil Procedure ("Rule") applicable in adversary proceedings. Rule 37(a) permits a party to move for an order compelling disclosure or discovery when an opposing party provides an evasive or incomplete response to an interrogatory. Fed. R. Civ. P. 37(a)(3), (4); Stolz v. Travelers Commercial Ins. Co., No. 2:18-cv-1923-KJM-KJN, 2020 U.S. Dist. LEXIS 74713, at *22 (E.D. Cal. Apr. 28, 2020).

"Generally, if the responding party objects to a discovery request, the party moving to compel bears the burden of demonstrating why the objections are not justified." Quezada v. Cate, No. 1:13-cv-00960-AWI-MJS, 2018 U.S. Dist. LEXIS 27965, at *3 (E.D. Cal. Feb. 21, 2018). The moving party must "inform the court which discovery requests are the subject of the motion to compel, and, for each disputed response, why the information sought is relevant and why the responding party's objections are not meritorious." Id.

Interrogatories 1 through 8

Interrogatories 1 through 8 relate to Defendant's actions as trustee and ask for the dates, amounts, and various other factual information related to Trust activities while Defendant was trustee. Ex. 6, Doc. #90. Each of Defendant's objections to interrogatories 1 through 8 reads as follows:

> This . . . interrogatory asks a specific number related question that of necessity is dependent upon responding party's final accounting and must await successful completion of this accounting before it can be answered with any confidence of accuracy. Please see the discussion contained in the above opposition document No. 40 referenced above which is hereby incorporated in its entirety by this reference as though fully set forth at length.

Ex. 7 ¶ 1, Doc. #90. The discussion referenced in Defendant's objections is an argument by Defendant that his health issues are preventing him from completing his accounting, but the court notes that Defendant also incorporated into his interrogatory responses that, as of May 5, 2020, Defendant expected to complete the accounting within 45 days. Ex. 7, Doc. 90.

The court finds that Defendant's responses to interrogatories 1 through 8 are evasive and incomplete. Plaintiff argues that a full accounting of trust activities is unnecessary to answer the specified interrogatories. Rule 33(d) permits a party answering an interrogatory to specify the records and permit the interrogating party to examine and copy the records. Defendant can either answer the interrogatory, or, if appropriate under Rule 33, can permit Plaintiff to examine and audit the records. Additionally, interrogatories 1 through 8 are relevant to this adversary proceeding because Plaintiff's claims arise out of Defendant's acts as trustee during the relevant period.

The court finds that the information sought by interrogatories 1 through 8 is relevant and Defendant's objections are without merit.

Interrogatories 9 through 24

Interrogatories 9 through 24 request Defendant's personal household income for each of the seventeen years that Defendant was the sole trustee. Ex. 6, Doc. #90. Defendant's objections to interrogatories 9 through 24 state the following:

> This . . . interrogatory is an interesting demand for a separate, personal accounting for respondent's household finances from approximately 17 years ago. Hmmm [. . .] how many people could do that? Where would a person even begin? It seems to this responding party on its face to be irrelevant and an unwarranted attempt to violate respondent's personal constitutional right to privacy and is hereby objected to on this further basis. However, these objections notwithstanding, if anything does crop up while this respondent is completing his accounting as surviving trustee of his Mom and Dad's Family Trust that strikes any arguably relevant portion of this interrogatory a glancing blow, then this responding party reserves the right to update this response to that extent. Further, please see also, the discussion contained in the above opposition document No. 40 referenced above which is hereby incorporated in its entirety by this reference as though fully set forth at length.

Ex. 7 ¶ 9, Doc. #90.

The court finds that Defendant's responses to interrogatories 9 through 24 are evasive and incomplete. Plaintiff argues that relevance is given a very broad meaning which, applied to the facts here, would include evidence of Defendant's household income for the relevant period. Plaintiff further argues that the discovery of Defendant's tax returns does not violate a constitutional right or a right to privacy, and that discovery of tax returns is appropriate here. This is because Defendant's use of Trust res for personal use may be indicated by his reported income during the relevant period. See Heathman v. United States. Dist. Court for Cent. Dist., 503 F.2d 1032, 1035 (9th Cir. 1974).

The court finds that the information sought by interrogatories 9 through 24 is relevant and Defendant's objections are without merit.

Interrogatories 30, 31, 35, 36, 37, 38, 40, and 41

Interrogatories 30, 31, 35, 36, 37, 38, 40, and 41 request Defendant provide the factual basis for his refusal to admit various requests for admission. Ex. 6, Doc. 90. Defendant's objections to these interrogatories are varied in text but not in form; they each recite Defendant's response to the specified request for admission but do not respond to the interrogatory. Ex. 7, Doc. #90.

The court finds that Defendant's responses to interrogatories 30, 31, 35, 36, 37, 38, 40, and 41 are evasive and incomplete. The responses to the specified interrogatories do not specify any grounds for the objection as required by Rule 33(b)(4). Therefore, Defendant's objections are without merit. The information requested by the specified interrogatories is relevant.

Conclusion

For the reasons stated above, the court finds that Defendant's answers to the interrogatories specified in Plaintiff's motion (Doc. #84) are evasive and incomplete, that Defendant's objections are without merit, and the information sought is relevant.

Accordingly, this motion is GRANTED. Defendant shall file and serve amended responses to the specified interrogatories no later than January 15, 2020. Failure to do so will result in sanctions pursuant to Rule 37(b).

10. 19-13951-A-7 **IN RE: BHUPINDER MAVI**
19-1139

CONTINUED STATUS CONFERENCE RE: COMPLAINT
12-26-2019 [1]

TRANSPORT FUNDING, LLC V. MAVI
RAFFI KHATCHADOURIAN/ATTY. FOR PL.
DISMISSED 11/24/20

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

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED.

This adversary proceeding was dismissed on November 24, 2020. Doc. #58.

11. 19-13951-A-7 **IN RE: BHUPINDER MAVI**
19-1139 FEC-1

CONTINUED ORDER TO SHOW CAUSE
3-2-2020 [16]

TRANSPORT FUNDING, LLC V. MAVI
DISMISSED 11/24/20

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

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED.

This adversary proceeding was dismissed on November 24, 2020. Doc. #58.

12. 20-12577-A-11 **IN RE: MARIA LUNA MANZO**
20-1056

CONTINUED STATUS CONFERENCE RE: COMPLAINT
9-1-2020 [1]

AHMED V. LUNA MANZO ET AL
DAVID GILMORE/ATTY. FOR PL.

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

DISPOSITION: Continued to January 14, 2021, at 11:00 a.m.

ORDER: The court will issue an order.

Pursuant to the parties' joint status conference statement, the status conference will be continued to January 14, 2021 at 11:00 a.m. Doc. #11.

13. 19-12047-A-7 **IN RE: ROBERT FLETCHER**
19-1097 DRJ-6

MOTION FOR ORDER APPROVING STIPULATION TO EXTEND DEADLINES AND PRODUCTION OF DOCUMENTS VIA ONSITE COPY/SCANNING SERVICE
12-4-2020 [101]

FLETCHER V. FLETCHER ET AL
DAVID JENKINS/ATTY. FOR MV.
OST, DOC # 106

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.

On December 4, 2020, the court granted the plaintiff's ex parte Motion for Order Shortening Time to hear the plaintiff's Motion for an Order Approving Stipulation. Doc. #106. This motion was set for hearing on December 10, 2020 at 11:00 a.m. pursuant to Local Rule of Practice ("LBR") 9014-1(f)(3). 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.

Russell Remington Fletcher ("Plaintiff") and Robert John Fletcher, Individually and as Trustee for the Robert John Fletcher and Diane L. Fletcher Family Revocable Trust of 2007 ("Defendants") submitted a signed Stipulation for Order Extending Certain Deadlines. Doc. #102. Plaintiff contemporaneously moved for an Order Approving Stipulation, as required by the Scheduling Order filed on May 15, 2020. Doc. #47.

The court is inclined to GRANT this motion. The court finds the stipulated request to extend various deadlines to be supported by good cause and due diligence. The court is inclined to continue the pre-trial conference to July 15, 2021 at 11:00 a.m. If opposition is presented at the hearing, the court will consider the opposition and whether a further hearing is necessary.