

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, November 09, 2016**

**Hearing Room 301**

9:30 AM

**1:11-24381 Eric Stephan and Melissa Stephan**

**Chapter 13**

**#0.10** Motion for relief from stay [RP]

WELLS FARGO BANK, NATIONAL ASSOCIATION  
VS  
DEBTOR

fr. 10/26/16;

Docket 63

**Tentative Ruling:**

**Tentative ruling from 10/26/16:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

Movant, or its agents, may, at its option, offer, provide and enter into a potential forbearance agreement, loan modification, refinance agreement or other loan workout or loss mitigation agreement. Movant, through its servicing agent, may contact the debtor by telephone or written correspondence to offer such an agreement. Any such agreement shall be nonrecourse unless stated in a reaffirmation agreement.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
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9:30 AM

**CONT... Eric Stephan and Melissa Stephan**

**Chapter 13**

**Debtor(s):**

Eric Stephan

Represented By  
Steven A Wolvek

**Joint Debtor(s):**

Melissa Stephan

Represented By  
Steven A Wolvek

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 09, 2016

Hearing Room 301

9:30 AM

1:15-12787 Rose Jelaca

Chapter 13

#0.20 Motion for relief from stay [PP]

AMERICREDIT FINANCIAL SERVICES, INC.  
VS  
DEBTOR

fr. 10/26/16;

**Stip for adequate protection filed 11/2/16**

Docket 28

\*\*\* VACATED \*\*\* REASON: APO entered 11/3/16 [doc. 33]

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Rose Jelaca

Represented By  
Rabin J Pournazarian

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 09, 2016

Hearing Room 301

9:30 AM

1:16-12907 Raul Garcia

Chapter 7

#1.00 Motion for relief from stay [UD]

ANZA MANAGEMENT COMPANY  
VS  
DEBTOR

Docket 7

**Tentative Ruling:**

This case was dismissed on October 25, 2016. Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to obtain possession of the property.

The order is binding and effective in any bankruptcy case commenced by or against the debtor for a period of 180 days, so that no further automatic stay shall arise in that case as to the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Any other request for relief is denied.

Movant must submit order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Raul Garcia

Pro Se

**United States Bankruptcy Court  
Central District of California  
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9:30 AM

**CONT... Raul Garcia**

**Chapter 7**

**Movant(s):**

Anza Management Company

Represented By  
Agop G Arakelian

**Trustee(s):**

Diane Weil (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
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Hearing Room 301

9:30 AM

**1:16-10045 Duane Daniel Martin and Tisha Michelle Martin**

**Chapter 7**

**#2.00** Motion for relief from stay [AN]

ANNEMARIE SHAH  
VS  
DEBTOR

Docket 119

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1). Movant seeks recovery only from applicable insurance and waives any deficiency or other claim against debtors or property of the debtors' bankruptcy estate.

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to proceed to final judgment in the nonbankruptcy forum, provided that the stay remains in effect with respect to enforcement of any judgment against the debtors or property of the debtors' bankruptcy estate.

The order is binding and effective in any bankruptcy case commenced by or against the debtors for a period of 180 days, so that no further automatic stay shall arise in that case as to the nonbankruptcy action.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Any other request for relief is denied.

Movant must submit order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**United States Bankruptcy Court  
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**CONT... Duane Daniel Martin and Tisha Michelle Martin**

**Chapter 7**

**Debtor(s):**

Duane Daniel Martin

Represented By  
Alan W Forsley

**Joint Debtor(s):**

Tisha Michelle Martin

Represented By  
Alan W Forsley

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Monica Y Kim  
Jeffrey S Kwong  
Beth Ann R Young

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
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Wednesday, November 09, 2016

Hearing Room 301

9:30 AM

1:12-15880 Francis John Bailiff

Chapter 13

#3.00 Motion for relief from stay [RP]

WELLS FARGO BANK, N.A.  
VS  
DEBTOR

Docket 45

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Francis John Bailiff

Represented By  
Steven P Chang

**Movant(s):**

WELLS FARGO HOME

Represented By  
Donna R Harris  
LeeAnne D May  
Shainna Surles  
Robert P Zahradka

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 09, 2016

Hearing Room 301

9:30 AM

1:13-10003 Sonia Harris

Chapter 13

#4.00 Motion for relief from stay [RP]

THE BANK OF NEW YORK MELLON  
VS  
DEBTOR

Docket 102

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

Movant, or its agents, may, at its option, offer, provide and enter into a potential forbearance agreement, loan modification, refinance agreement or other loan workout or loss mitigation agreement. Movant, through its servicing agent, may contact the debtor by telephone or written correspondence to offer such an agreement. Any such agreement shall be nonrecourse unless stated in a reaffirmation agreement.

Upon entry of the order, for purposes of Cal. Civ. Code § 2923.5, the debtor is a borrower as defined in Cal. Civ. Code § 2920.5(c)(2)(C).

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

**Party Information**

**Debtor(s):**

Sonia Harris

Represented By

**United States Bankruptcy Court  
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**Wednesday, November 09, 2016**

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**CONT... Sonia Harris**

**Chapter 13**

Steven A Wolvek  
David Brian Lally

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

Wednesday, November 09, 2016

Hearing Room 301

9:30 AM

1:14-10334 Kurt Stromer

Chapter 13

#5.00 Motion for relief from stay [RP]

HSBC BANK USA, NATIONAL ASSOCIATION  
VS  
DEBTOR

Docket 45

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Kurt Stromer

Represented By  
David S Hagen

**Movant(s):**

HSBC Bank USA, National

Represented By  
Robert P Zahradka

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
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Wednesday, November 09, 2016

Hearing Room 301

9:30 AM

1:16-12197 Gertley Maureen Freeda De Silva

Chapter 13

#6.00 Motion for relief from stay [RP]

HSBC BANK USA, N.A.  
VS  
DEBTOR

Docket 33

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

Movant, or its agents, may, at its option, offer, provide and enter into a potential forbearance agreement, loan modification, refinance agreement or other loan workout or loss mitigation agreement. Movant, through its servicing agent, may contact the debtor by telephone or written correspondence to offer such an agreement. Any such agreement shall be nonrecourse unless stated in a reaffirmation agreement.

The co-debtor stay of 11 U.S.C. § 1301(a) is terminated, modified, or annulled as to the co-debtor, on the same terms and conditions as to the debtor.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

<b>Party Information</b>
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**Debtor(s):**

Gertley Maureen Freeda De Silva

Represented By

**United States Bankruptcy Court  
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**CONT...**

**Gertley Maureen Freeda De Silva**

Robert S Altagen

**Chapter 13**

**Movant(s):**

HSBC Bank USA, National

Represented By  
Nancy L Lee

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
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Wednesday, November 09, 2016

Hearing Room 301

9:30 AM

1:16-12533 Dejan Petrovic

Chapter 13

#7.00 Motion for relief from stay [RP]

U.S. BANK NATIONAL ASSOCIATION  
VS  
DEBTOR

Docket 12

**Tentative Ruling:**

This case was dismissed on November 1, 2016. Accordingly, pursuant to 11 U.S.C. § 362(c)(2)(B), no stay is in effect as to the real property located at 15740 Lemarsh St., North Hills, CA 91343 (the "Property").

Notwithstanding the foregoing, the Court may set an evidentiary hearing to determine if prospective relief under 11 U.S.C. § 362(d)(4) is warranted.

On the one hand, movant alleges that § 362(d)(4) applies based on the following facts:

- (1) Two unauthorized transfers of an interest in the Property were made as follows: (i) on June 9, 2011, via grant deed, from debtor to debtor and Diana G. Corpus as joint tenants [Exh. 7 to motion]; and (ii) on June 18, 2011, via grant deed, from debtor to debtor and Jennifer Duran as joint tenants [Exh. 8 to motion].
- (2) Three prior bankruptcy cases have been filed affecting the Property: (i) Case No. 1:15-bk-14156-MB, filed by Diana G. Corpus; (ii) Case No. 2:16-bk-13320-WB, filed by Jennifer Duran; and (iii) Case No. 1:16-bk-11610-VK, also filed by the debtor. All three prior cases were dismissed.

On the other hand, the motion indicates that the alleged arrearages total only \$4,353.60 (based on two late payments). No notice of default has been recorded, and no foreclosure sale has been set. Moreover, the debtor filed an opposition in which he denies that he filed his present case in bad faith. However, the debtor did not attach to his opposition a declaration signed under penalty of perjury.

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**CONT... Dejan Petrovic**

**Chapter 13**

**Debtor(s):**

Dejan Petrovic

Pro Se

**Movant(s):**

U.S. Bank National Association, as

Represented By  
Robert P Zahradka

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
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**Wednesday, November 09, 2016**

**Hearing Room 301**

1:30 PM

**1:15-10109 Claire Ashook**

**Chapter 7**

Adv#: 1:15-01070 De Giacomo v. Ashook

**#8.00** Pretrial status conference re: second amended complaint to determine non-dischargeability of debt to plaintiff

fr. 6/17/15; 7/22/15; 9/16/15; 11/4/15; 11/18/15; 3/16/16;  
5/4/16; 9/14/16(stip)

Docket 35

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
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**Debtor(s):**

Claire Ashook

Represented By  
Raymond Perez

**Defendant(s):**

Claire Ashook

Pro Se

**Plaintiff(s):**

Sally De Giacomo

Pro Se

**Trustee(s):**

Diane Weil (TR)

Pro Se

Diane Weil (TR)

Pro Se

**US Trustee(s):**

United States Trustee (SV)

Pro Se

**United States Bankruptcy Court  
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**Wednesday, November 09, 2016**

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1:30 PM

**1:15-11004 Chad Eric Yeaman**

**Chapter 7**

Adv#: 1:15-01101 Herman v. Yeaman et al

**#9.00** Pretrial conference re : complaint objecting to discharge pursuant to 11 U.S.C. sec 727(a)(4)(A); 11 U.S.C. sec 523(a)(2)(A) and 11 U.S.C. sec 523(a)(6)

fr. 9/2/15; 3/9/16; 5/11/16; 6/1/16; 8/24/16

Docket 1

**Tentative Ruling:**

Based on the parties' witness schedules [docs. 87, 91], it appears the following witnesses will be testifying on the days noted below:

Monday, January 30, 2017

David Herman, to be called by the plaintiff: cross-examination and re-direct examination only. Declaration of direct testimony to be filed by January 3, 2016.

Kimberly Minor, to be called by the plaintiff as a hostile witness. Ms. Minor will provide live direct testimony.

Dr. Terrance Hammer, to be called by the plaintiff: cross-examination and re-direct examination only. Declaration of direct testimony to be filed by January 3, 2016.

Tuesday, January 31, 2017

Aaron Arredondo, to be called by the plaintiff: cross-examination and re-direct examination only. Declaration of direct testimony to be filed by January 3, 2016.

Chad Smith, to be called by the plaintiff as a hostile witness. Mr. Smith will provide live direct testimony.

Chad Eric Yeaman, to be called by the defendants: cross-examination and re-direct examination only. Declaration of direct testimony to be filed by January 3, 2016.

**United States Bankruptcy Court  
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**CONT... Chad Eric Yeaman**

**Chapter 7**

Cynthia Theresa Viray, to be called by the defendants: cross-examination and re-direct examination only. Declaration of direct testimony to be filed by January 3, 2016.

Wednesday, February 1, 2017

Kimberly Minor, to be called by the defendants: cross-examination and re-direct examination only. Declaration of direct testimony to be filed by January 3, 2016.

Chad Smith, to be called by the defendants: cross-examination and re-direct examination only. Declaration of direct testimony to be filed by January 3, 2016.

The parties should confirm if they intend to call Ms. Minor and Mr. Smith on two separate days or if they prefer to consolidate Ms. Minor's and Mr. Smith's testimony into one day.

If the parties intend to play any recordings during trial, the parties must contact Jeffrey Voth at 1 (818) 587-2880 and arrange a time and date *prior to trial* to set up equipment in the courtroom.

The Court's trial setting order [doc. 71] inaccurately listed 11 U.S.C. § 523(a)(4) as an issue to be heard at trial. The Court will prepare an amended trial setting order reflecting that trial will be on the plaintiff's claims under 11 U.S.C. §§ 523(a)(2)(A), (a)(6) and 727(a)(4).

<b>Party Information</b>
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**Debtor(s):**

Chad Eric Yeaman

Represented By  
Rob R Nichols

**Defendant(s):**

Cynthia Theresa Sagun Viray

Pro Se

Chad Eric Yeaman

Pro Se

**United States Bankruptcy Court  
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**CONT... Chad Eric Yeaman**

**Chapter 7**

**Joint Debtor(s):**

Cynthia Theresa Sagun Viray

Represented By  
Rob R Nichols

**Plaintiff(s):**

David Richard Herman

Represented By  
Stanley D Bowman

**Trustee(s):**

Diane Weil (TR)

Pro Se

Diane Weil (TR)

Pro Se

**US Trustee(s):**

United States Trustee (SV)

Pro Se

**United States Bankruptcy Court  
Central District of California  
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Wednesday, November 09, 2016

Hearing Room 301

1:30 PM

1:15-12754 Carlos Maximiliano Linqui

Chapter 13

Adv#: 1:15-01264 El Sabor Latino v. Linqui

**#10.00** Status conference re second amended complaint :  
1) for determination of non-dischargeability of debt  
(11 U.S.C. sec 523(a)(2)); and  
2) for determination of non-dischargeability of debt  
(11 U.S.C. sec 523(a)(6))

fr. 3/9/16; 5/11/16; 7/20/16; 9/7/16(stip)

**Stip to continue filed 11/2/16**

Docket 31

**\*\*\* VACATED \*\*\* REASON: Order entered 11/3/16 cont matter to  
11/16/16 @ 2:30pm.**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Carlos Maximiliano Linqui

Represented By  
Kevin T Simon

**Defendant(s):**

Carlos Maximiliano Linqui

Pro Se

**Plaintiff(s):**

El Sabor Latino

Represented By  
Scott E Shapiro Esq

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

Elizabeth (SV) F Rojas (TR)

Pro Se

**US Trustee(s):**

United States Trustee (SV)

Pro Se

**United States Bankruptcy Court  
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**CONT... Carlos Maximiliano Linqui**

**Chapter 13**

**United States Bankruptcy Court  
Central District of California  
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Wednesday, November 09, 2016

Hearing Room 301

1:30 PM

1:15-13561 Akop Terpogosyan

Chapter 7

Adv#: 1:16-01036 International Diamond Club, Inc. v. Terpogosyan et al

#11.00 Status conference re complaint for determination of  
nondischargeability of debt

fr. 6/1/16; 7/6/16; 10/19/16

Docket 1

\*\*\* VACATED \*\*\* REASON: Order approving stipulation to dismiss  
entered 11/4/16 [doc. 29].

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Akop Terpogosyan

Represented By  
Stephen L Burton

**Defendant(s):**

Lilit Chaghayan

Pro Se

Akop Terpogosyan

Pro Se

**Joint Debtor(s):**

Lilit Chaghayan

Represented By  
Stephen L Burton

**Plaintiff(s):**

International Diamond Club, Inc.

Represented By  
Nico N Tabibi

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

Amy L Goldman (TR)

Pro Se

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**CONT... Akop Terpogosyan  
US Trustee(s):**

**Chapter 7**

United States Trustee (SV)

Pro Se

**United States Bankruptcy Court  
Central District of California  
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1:30 PM

**1:15-13561 Akop Terpogosyan**

**Chapter 7**

Adv#: 1:16-01038 Kaplan Diamond Corporation v. Terpogosyan

**#12.00** Pretrial conference re: first amended complaint to determine nondischargeability of debt

fr. 5/18/16; 6/15/16; 7/6/16

Docket 3

**\*\*\* VACATED \*\*\* REASON: Order on stipulation for judgment entered 9/14/16**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Akop Terpogosyan

Represented By  
Stephen L Burton

**Defendant(s):**

Akop Terpogosyan

Pro Se

**Joint Debtor(s):**

Lilit Chaghayan

Represented By  
Stephen L Burton

**Plaintiff(s):**

Kaplan Diamond Corporation

Represented By  
David I Brownstein

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
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**CONT... Akop Terpogosyan**

**Chapter 7**

**US Trustee(s):**

United States Trustee (SV)

Pro Se

**United States Bankruptcy Court  
Central District of California  
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**Wednesday, November 09, 2016**

**Hearing Room 301**

2:30 PM

**1:15-12309 Roberta Mackey**

**Chapter 7**

Adv#: 1:15-01221 Gordon et al v. Mackey

**#13.00** Plaintiffs' Motion for reconsideration

Docket 111

**Tentative Ruling:**

Deny.

**I. BACKGROUND**

On July 6, 2015, Roberta Mackey ("Defendant") filed a voluntary chapter 7 petition. On October 7, 2015, William M. Gordon and Jacquelynn Y. Gordon ("Plaintiffs") filed a complaint against Defendant, initiating this adversary proceeding.

On December 15, 2015, the Court entered a scheduling order, setting March 18, 2016 as the deadline to complete discovery [doc. 11]. On March 18, 2016, Defendant filed a motion to extend the discovery deadline (the "Motion to Extend") [doc. 29]. In the Motion to Extend, Defendant requested additional time to complete discovery because Mr. Gordon responded to all discovery by stating he could not respond because of his age and failing health. The Court subsequently granted the Motion to Extend, extending the deadline for Defendant to complete discovery to June 30, 2016 [doc. 57].

On March 28, 2016, Defendant filed a motion to compel Mr. Gordon to respond to Defendant's discovery requests (the "Motion to Compel") [doc. 32]. On June 8, 2016, the Court held a hearing on the Motion to Compel. At this time, Mr. Gordon had produced the documents requested by Defendant, although the documents were produced over a month after the deadline. Mr. Gordon had not yet responded to the interrogatories propounded by Defendant.

The Court ruled that Mr. Gordon did not comply with the Federal Rules of Civil Procedure because: (A) Mr. Gordon did not timely produce documents in accordance

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CONT...

**Roberta Mackey**

**Chapter 7**

with Federal Rule of Civil Procedure ("Rule") 34; and (B) Mr. Gordon did not provide adequate responses to interrogatories because Mr. Gordon and/or his counsel merely objected to each interrogatory instead of providing Defendant with the portions of Mr. Gordon's prior testimony that were responsive to the interrogatories and which Plaintiffs indicated they intended to use at trial. Later, the Court entered an order granting the Motion to Compel and sanctioning Mr. Gordon and his attorney, Ray Bowen, Jr., jointly and severally, in the amount of \$2,835 (the "Order") [doc. 84]. The Order further provided that Mr. Gordon and Mr. Bowen must pay \$2,835 to Defendant's counsel no later than June 30, 2016.

On August 8, 2016, this adversary proceeding was transferred to the Hon. Geraldine Mund [doc. 95]. Thereafter, on September 20, 2016, Plaintiffs filed a motion to reconsider the Order (the "Motion") [doc. 111]. In the Motion, Plaintiffs request that the Court vacate the portion of the Order requiring Mr. Gordon and Mr. Bowen to pay sanctions. Plaintiffs base the Motion on Rule 60(b)(1) and (b)(6). According to Plaintiffs, the Court erred by allegedly requiring Mr. Gordon to answer interrogatories personally, although he was incapable of doing so, and by allegedly requiring Mrs. Gordon to answer interrogatories on Mr. Gordon's behalf.

On September 26, 2016, the Court entered an order assigning the Motion to the Hon. Victoria S. Kaufman [doc. 117]. Defendant opposed the Motion and requested an award of attorneys' fees incurred in opposing the Motion [doc. 133].

## II. ANALYSIS

Rule 60(b), applicable in accordance with Federal Rule of Bankruptcy Procedure 9024, provides that "[o]n motion and just terms, the court may relieve a party or its legal representative from a *final* judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect." (emphasis added).

Here, the order from which Plaintiffs seek relief is interlocutory. *See Cunningham v. Hamilton Cty., Ohio*, 527 U.S. 198, 209-10, 119 S.Ct. 1915, 1922-23, 144 L.Ed.2d 184 (1999) (holding that orders imposing discovery sanctions are interlocutory); *In re Roque*, 2014 WL 351424, at \*5 (B.A.P. 9th Cir. Jan. 31, 2014) ("Orders denying a motion for a continuance and granting a motion to compel discovery are ... generally interlocutory. A court's ruling on a motion to continue does not end the litigation.

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CONT...

**Roberta Mackey**

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The same is true for a motion to compel discovery."). Consequently, the Court will deny Plaintiffs' request for relief under Rule 60(b).

Nevertheless, courts may reconsider interlocutory orders under their inherent authority or pursuant to Rule 54(b). *See Motorola, Inc. v. J.B. Rodgers Mech. Contractors*, 215 F.R.D. 581, 583 (D. Ariz. 2003). "While the common law and Rule 54(b) may provide distinct sources for this Court's authority to reconsider its rulings, it appears the approach should be the same under both." *Id.*; *see also Hansen v. Schubert*, 459 F.Supp.2d 973, 998 (E.D. Cal. 2006).

Under either authority, courts may properly reconsider a decision if: (1) the court is presented with newly discovered evidence; (2) the court committed clear error or the initial decision was manifestly unjust; or (3) there is an intervening change in controlling law. *Smith v. Clark Cty. Sch. Dist.*, 727 F.3d 950, 955 (9th Cir. 2013); *see also Hansen*, 459 F.Supp.2d at 998.

Motions for reconsideration are an "extraordinary remedy" that should be used "sparingly in the interests of finality and the conservation of judicial resources." *Kona Enters. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000). Motions for reconsideration "may *not* be used to raise arguments or present evidence for the first time when they could reasonably have been raised earlier in the litigation." *Id.*; *see also United States v. \$43,660.00 in U.S. Currency*, 2016 WL 1629284, at \*3 (M.D.N.C. Apr. 22, 2016) (same holding in context of Rule 54(b)).

Here, Plaintiffs have not presented any newly discovered evidence, nor do they appear to be contending that newly discovered evidence is the basis of the Motion. **FN1.** Moreover, there has been no intervening change in controlling law since the Court entered the Order.

As such, the only basis for relief is if the Court "committed clear error or the initial decision was manifestly unjust." *Smith*, 727 F.3d at 955. "A 'manifest injustice' is defined as 'an error in the trial court that is direct, obvious, and observable, such as a defendant's guilty plea that is involuntary or that is based on a plea agreement that the prosecution rescinds,' while the term 'manifest error' is 'an error that is plain and indisputable, and that amounts to a complete disregard of the controlling law or the credible evidence in the record.'" *In re Oak Park Calabasas Condo. Ass'n*, 302 B.R.

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682, 683 (Bankr. C.D. Cal. 2003) (quoting Black's Law Dictionary 563 (7th ed. 1999)). "A 'showing of manifest injustice requires that there exists a fundamental flaw in the court's decision that without correction would lead to a result that is both inequitable and not in line with applicable policy.'" *In re Wahlin*, 2011 WL 1063196, at \*3 (Bankr. D. Idaho Mar. 21, 2011) (quoting *In re Henning*, 420 B.R. 773, 785 (Bankr. W.D. Tenn. 2009)).

Here, Plaintiffs have not demonstrated a "direct, obvious, and observable" error that "amounts to a complete disregard of the controlling law or the credible evidence in the record." *Oak Park Calabasas*, 302 B.R. at 683. Nor have Plaintiffs shown that the Order was fundamentally unfair in light of governing law or otherwise inequitable. The Court's ruling, on which the Order is based, set forth the authority on which the Court relied. The Court found that Mr. Gordon and his counsel did not provide documents requested by Defendant during discovery until after Defendant filed and served the Motion to Compel. The Court also found that Mr. Gordon and his counsel did not provide adequate answers to Defendant's interrogatories. These actions were inconsistent with the requirements of the Rules. Pursuant to Rule 37, the Court may impose sanctions against a party who does not comply with discovery requirements.

In the Motion, Plaintiffs argue that the Court erred in requiring Mr. Gordon to respond to interrogatories when he is mentally incapacitated and that the Court erred by allegedly requiring Mrs. Gordon to respond on Mr. Gordon's behalf. This is an inaccurate representation of the Court's ruling. First, the Court neither required Mr. Gordon to respond to interrogatories personally, nor required Mrs. Gordon to answer interrogatories on Mr. Gordon's behalf. At the hearing on the Motion to Compel, the Court instructed Plaintiffs that, if Mr. Gordon was unable to respond to interrogatories himself, Plaintiffs should have responded to the interrogatories by referencing Mr. Gordon's prior testimony, which Plaintiffs indicated they planned to do at trial. As such, the Court's instruction to Mr. Gordon and his counsel was to supplement Mr. Gordon's interrogatory responses by pointing Defendant to the documents and prior testimony Plaintiffs intended to use in place of Mr. Gordon's live testimony at trial, not to have Mr. or Mrs. Gordon personally respond to the interrogatories.

Next, the Motion makes no mention that the Order, including the award of sanctions, was based in part on Mr. Gordon's and his counsel's failure to provide documents requested by Defendant timely, in accordance with Rule 34; after Defendant filed the

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Motion to Compel, Plaintiffs provided these documents to Defendant. Plaintiffs do not discuss why an award of sanctions pursuant to Rules 34 and 37 was improper based on their failure to timely produce the documents.

Overall, Plaintiffs have not shown that the Court rendered a decision that was inconsistent with the law or unjust. The Court imposed sanctions in accordance with the Rules, which sanctions could have been avoided if Mr. Gordon and his counsel had complied with the Rules. Moreover, it is inappropriate for Plaintiffs to raise arguments in a motion for reconsideration that were already raised or could reasonably have been raised in connection with the Motion to Compel. *Kona Enterprises*, 229 F.3d at 890. As such, Plaintiffs have not provided a legitimate basis for the Court to reconsider the Order.

Defendant requests an award of her attorneys' fees incurred in opposing the Motion. Defendant has not provided any authority justifying an award of fees. As a result, the request is denied.

### **III. CONCLUSION**

The Court will deny the Motion.

Defendant should submit an order within seven (7) days.

### **FOOTNOTES**

1. To the extent Plaintiffs contend that Judge Mund's subsequent rulings constitute "new evidence," those rulings do not excuse the conduct which resulted in the Court's imposition of discovery sanctions against Mr. Gordon and Plaintiffs' counsel, as set forth in the Order.

Tentative ruling regarding the evidentiary objections to the identified exhibits or portions of the Declarations set forth below:

Defendant's Evidentiary Objections to the Declaration of Ray B. Bowen, Jr.  
exhibits 1-6: sustain

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Plaintiffs' Evidentiary Objections to the Declaration of David Lally

para. 30: overrule

para. 31: overrule, except sustain as to "*knowing that he is incapable of responding . . .*" through the remainder of para. 31.

para. 32: sustain as to "*he refused to comply*"

para. 33: sustain as to "*With regards to the instant Motion, at this juncture, nothing has changed, Mr. Gordon is in the same condition;*" overrule as to the remainder of para. 33.

para. 34: sustain as to "*However, as noted above, his Counsel prepared the Responses, not Mr. Gordon;*" overrule as to the remainder of para. 34.

para. 35: overrule as to "*Mrs. Gordon has said over and over again in her Superior Court deposition that she has no personal knowledge of the underlying facts.*"

*Accordingly, discovery was served on Mr. Gordon;*" sustain as to the rest of para. 35.

para. 36: sustain as to "*the Motion raises the irrelevant issue of the alleged lack of meet and confer before the Motion to Compel was filed. First this is irrelevant, and is merely water under the bridge*" and page 14, lines 13-17; overrule as to the remainder of para. 36.

**Party Information**

**Debtor(s):**

Roberta Mackey

Represented By  
James R Selth

**Defendant(s):**

Roberta Mackey

Represented By  
David Brian Lally

**Plaintiff(s):**

Jacquelynn Y. Gordon

Represented By  
Ray B Bowen Jr

William M. Gordon

Represented By  
Ray B Bowen Jr

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se

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Adv#: 1:16-01062 Kim et al v. Cheong et al

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**#14.00** Motion for default judgment

Docket 23

**Tentative Ruling:**

Deny. Neither the complaint nor the declarations filed in support of the motion for default judgment (the "Motion") [docs. 23, 26] establish a claim against the debtor under 11 U.S.C. § 523(a)(2)(A).

Federal Rule of Civil Procedure ("Rule") 55, incorporated by Federal Rule of Bankruptcy Procedure 7055, governs default judgments. Rule 55(b)(2) provides as follows:

(b) Judgment. Judgment by default may be entered as follows...

(2) By the Court. In all other cases the party entitled to a judgment by default shall apply to the court therefor; but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a general guardian, committee, conservator, or other such representative who has appeared therein. If the party against whom judgment by default is sought has appeared in the action, the party (or, if appearing by representative, the party's representative) shall be served with written notice of the application for judgment at least 3 days prior to the hearing on such application. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties when and as required by any statute of the United States.

"Our starting point is the general rule that default judgments are ordinarily

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disfavored." *Eitel v. McCool*, 782 F.2d 1470, 1472 (9th Cir. 1986). But, "[c]ourts have inherent equitable powers to dismiss actions or enter default judgments for failure to prosecute, contempt of court, or abusive litigation practices." *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 916 (9th Cir. 1987). "The bankruptcy court has broad discretion to grant a default judgment; the plaintiff is not entitled to such judgment as a matter of right." *In re McGee*, 359 B.R. 764, 771 (B.A.P. 9th Cir. 2006). "The trial court's 'broad discretion' over entry of default judgment includes the discretion to require the plaintiff to prove its case with competent, admissible evidence, to assess matters in accordance with substantial justice, and to make reasonable inferences against the plaintiff." *Id.*, at 775.

"[A] default establishes the *well-pleaded* allegations of a complaint unless they are . . . contrary to facts judicially noticed or to uncontroverted material in the file." Facts that are *not* well pled include allegations that are "made indefinite or erroneous by other allegations in the same complaint, . . . allegations which are contrary to the facts of which the court will take judicial notice, or which are not susceptible to proof by legitimate evidence, or which are contrary to the uncontroverted material in the file of the case." It follows that a default judgment that is based solely on the pleadings may only be granted upon well-pled factual allegations, and only for relief for which a sufficient basis is asserted in a complaint.

*Id.*, at 772. Further, even if the Court takes the plaintiff's facts as true, "the facts alleged in the complaint may be insufficient to establish liability." *Id.*, at 771.

"The factors to be considered for entry of a default judgment include (1) the possibility of prejudice to the plaintiff, (2) the merits of the plaintiff's substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at stake in the action, (5) the possibility of a dispute concerning material facts, (6) whether the default was due to excusable neglect, and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits." *McGee*, 359 B.R. at 771 (citing *Eitel v. McCool*, 782 F.2d at 1471-72). However, "Rule 55 gives the court

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considerable leeway as to what it may require as a prerequisite to the entry of a default judgment." *Televideo Systems*, 826 F.2d at 917.

Here, the complaint alleges conspiracy to defraud under 11 U.S.C. § 523(a)(2)(A). To prevail on a § 523(a)(2)(A) claim, the plaintiffs must prove the following five elements, by a preponderance of the evidence:

- (1) misrepresentation, fraudulent omission or deceptive conduct by the debtor;
- (2) knowledge of the falsity or deceptiveness of his statement or conduct;
- (3) an intent to deceive;
- (4) justifiable reliance by the creditor on the debtor's statement or conduct; and
- (5) damage to the creditor proximately caused by its reliance on the debtor's statement or conduct

*In re Weinberg*, 410 B.R. 19, 35 (B.A.P. 9th Cir. 2009) (citing *In re Slyman*, 234 F.3d 1081, 1085 (9th Cir. 2000)).

In the complaint, the plaintiffs assert a broad theory of a conspiracy between the debtor and alleged Doe Defendants. *See* Complaint [doc. 1], ¶ 6. However, in the complaint, the plaintiffs do not assert that the debtor made any specific representation or omission to the plaintiffs. Instead, the vast majority of the complaint makes factual allegations against Kum Ja Yoon ("Yoon") and Hai Cheong ("Hai"), neither of whom are defendants in this adversary proceeding.

According to the complaint, the individuals who made false or misleading representations to the plaintiffs were Yoon (*see* Complaint ¶¶ 14, 16, 17, 19, 2, 23, 24) and Hai (*see* Complaint ¶¶ 20, 22, 23, 24). Thus, to satisfy the elements of § 523(a)(2)(A), the plaintiffs must impute liability on the debtor for Yoon's or Hai's misrepresentations. The plaintiffs refer to the group of Yoon, Hai, Debtor and Lee Chou as the co-conspirators who "perpetrated" a "calculated fraud scheme" and "stole over \$1.61 million from [Plaintiff] Kyung." Complaint, ¶¶ 1, 2. Regarding the debtor,

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the allegations in the complaint allege that: (A) the debtor received money for the purchase of Lot 3, deposited in a joint bank account with Hai, Complaint, ¶ 22, and that the debtor and Hai then transferred the lots to Yoon. Complaint, ¶ 24. The declarations filed in support of the Motion do not provide additional facts regarding the debtor's involvement.

Some courts "have held that acts which would merit nondischargeability under Section 523(a) of the Bankruptcy Code can be attributed to a debtor who did not actually perform them, if the debtor was an 'active and knowing participant' in a scheme or conspiracy through which a third-party malefactor performed the acts." *In re Evans*, 410 B.R. 317, 321 (Bankr. M.D. Fla. 2009) (quoting *In re Markarian*, 228 B.R. 34, 39 (B.A.P. 1st Cir. 1998) ("[S]ection 523(a)(2)(A) may include debts which arise from the wrongful acts of conspirators and their co-conspirators.")). One bankruptcy court within this circuit has come to a similar conclusion. *In re Buck*, 75 B.R. 417, 420-21 (Bankr. N.D. Cal. 1987) ("[A] debtor who has made no false representation may nevertheless be bound by the fraud of another if a debtor is a knowing and active participant in the scheme to defraud.").

Recently, in *Husky Int'l Elecs., Inc. v. Ritz*, 136 S.Ct. 1581, 194 L.Ed.2d 655 (2016), the Supreme Court found that "actual fraud" (in that case, the debtor's active participation in fraudulent conveyances), "do[es] not require a misrepresentation from a debtor to a creditor." In light of *Husky International*, active participation in a conspiracy to defraud, if adequately alleged, could be sufficient to state a claim under § 523(a)(2)(A).

"To state a cause of action for civil conspiracy [under California law], the complaint must allege (1) the formation and operation of a conspiracy; (2) the wrongful act or acts done pursuant thereto; and (3) the damage resulting from such act or acts." *Lachapelle v. Kim*, 2015 WL 5461542, at \*7 (N.D. Cal. Sept. 16, 2015) (citing *Younan v. Equifax, Inc.*, 111 Cal.App.3d 498, 511 n.9 (Ct. App. 1980)). To impute liability on a specific member of an alleged conspiracy, "a plaintiff must allege knowledge of the wrongful activity, agreement to join in the wrongful activity, and intent to aid in the wrongful activity." *Id.* (citing *Kidron v. Movie Acquisition Corp.*,

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40 Cal.App.4th 1571, 1583 (Cal. Ct. App. 1995)). "The plaintiff must show that each member of the conspiracy came to the agreement." *Id.* (citing *Arei II Cases*, 216 Cal.App.4th 1004, 1022 (Cal. Ct. App. 2013)).

Here, the complaint and supporting declarations make the following allegations regarding the debtor: (A) that part of the deposit for the purchase of Lot 3 went into the bank account of the debtor and Hai, Complaint, ¶ 22; and (B) that the debtor and Hai entered into an agreement to sell Lots 1, 2 and 3 to Yoon for \$1.2 million and later gave title to Lot 3 to Yoon as commission. Complaint, ¶ 24. Although paragraphs 28 and 29 of the complaint allege that the plaintiffs relied on the debtor's representations, the remainder of the complaint alleges that other individuals - not *the debtor* - made the subject misrepresentations.

As such, the complaint is insufficient as to the debtor. First, it does not allege any fraudulent conduct by the debtor. Second, it does not sufficiently allege that the debtor was involved in a conspiracy; the complaint does not allege that the debtor had any knowledge of the alleged wrongful activity, that she agreed to join in the alleged wrongful activity or that she had intent to aid in the alleged wrongful activity.

Because the plaintiffs have not established a claim for nondischargeability under 11 U.S.C. § 523(a)(2)(A), the Court will deny the Motion.

The Court will prepare the order.

<b>Party Information</b>
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**Debtor(s):**

Alice Sungjin Cheong	Pro Se
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**Defendant(s):**

DOES 1 through 10, inclusive	Pro Se
Alice Sungjin Cheong	Pro Se

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**Plaintiff(s):**

KYUNG CHUL KIM

Represented By  
Daren M Schlecter

Mi Hee Kim

Represented By  
Daren M Schlecter

**Trustee(s):**

Diane Weil (TR)

Pro Se

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**Chapter 7**

Adv#: 1:16-01062 Kim et al v. Cheong et al

**#15.00** Status conference re: complaint for non-dischargeability for debts incurred through false pretenses, false representation or actual fraud under 11 U.S.C. §523(a)(2)(A)

fr. 8/10/16; 10/5/16

Docket 1

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
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**Debtor(s):**

Alice Sungjin Cheong Pro Se

**Defendant(s):**

DOES 1 through 10, inclusive Pro Se

Alice Sungjin Cheong Pro Se

**Plaintiff(s):**

KYUNG CHUL KIM Represented By  
Daren M Schlecter

Mi Hee Kim Represented By  
Daren M Schlecter

**Trustee(s):**

Diane Weil (TR) Pro Se

Diane Weil (TR) Pro Se

**US Trustee(s):**

United States Trustee (SV) Pro Se