United States Bankruptcy Court
Central District of California
Riverside
Mark Houle, Presiding
Courtroom 301 Calendar

Wednesday, May 4, 2022 **Hearing Room 301**

10:00 AM

6:21-16438 Clifford Jacobs **Chapter 7**

#1.00 CONT. Pro se Reaffirmation Agreement Between Debtor and Toyota Motor Credit Corporation, in the amount of $17,752.41, re: 2018 Toyota Prius

From; 4/6/22

EH__

Docket 12

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Clifford Jacobs Pro Se

Trustee(s):

Howard B Grobstein (TR) Pro Se

United States Bankruptcy Court
Central District of California
Riverside
Mark Houle, Presiding
Courtroom 301 Calendar

Wednesday, May 4, 2022 **Hearing Room 301**

10:00 AM

6:22-10592 Farrell Evan Meisel **Chapter 7**

#2.00 Reaffirmation Agreement Between Debtor and Santander Consumer USA Inc. in the amount of $19,141.36, re: 2021 Hyundai Sonata

EH__

Docket 10

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Farrell Evan Meisel — Represented By David S Hagen

Trustee(s):

Larry D Simons (TR) — Pro Se

11:00 AM

6:17-20092 Mark Bastorous and Bernadette Shenouda **Chapter 7**

#3.00 Chapter 7 Trustee's Motion to Approve Compromise Under Rule 9019 Motion For Order Approving Compromise Of Controversy Re Adversary Case No. 6:20-Ap-01059- MH, John Pringle V. Mervat Shafik, Pursuant To Rule 9019 Of The Federal Rules Of Bankruptcy Procedure; Request For Payment Of Contingency Fee

EH__

[Tele. appr. David Goodrich, rep. chapter 7 trustee]

Docket 315

Tentative Ruling:

5/4/2022

BACKGROUND

On December 8, 2017, Mark Bastorous & Bernadette Shenouda (collectively, "Debtors") filed a Chapter 7 voluntary petition. The Court eventually entered an order substantively consolidating Debtors' estate with thirty-seven related entities, including Professional Investment Group LLC ("PIG").

The Chapter 7 Trustee ultimately filed adversary proceedings against dozens of individuals and entities who allegedly profited from fraudulent transfers made by Debtors through PIG. One of those adversary proceedings was filed against Boles Bishay ("Defendant"). Trustee and Defendant ultimately settled the adversary proceeding, with Trustee agreeing to dismiss the proceeding in exchange for $140,000 and a withdrawal of the proof of claim filed by Defendant. The compromise motion (an omnibus compromise motion) was filed on June 7, 2021. On July 19, 2021, Mervat Shafik ("Defendant's Spouse") filed an opposition to the compromise, attesting that Defendant had died on June 21, 2021, that Defendant's Spouse opposed the motion, and that Defendant's offer to compromise should be revoked. On August 5, 2021, the Court entered an order approving the compromise.

On September 7, 2021, Trustee filed a motion to substitute Defendant's Spouse as

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CONT... Mark Bastorous and Bernadette Shenouda **Chapter 7**

defendant. The motion was unopposed and was granted pursuant to Court order entered October 14, 2021.

Defendant's Spouse apparently continues to contend that the settlement is not binding on her. On April 4, 2022, Trustee filed a motion to approve compromise with Defendant's Spouse. Pursuant to the compromise, the settlement payment by Defendant's Spouse would be reduced by $40,000.

DISCUSSION

Rule 9019(a) authorizes the bankruptcy court to approve a compromise or settlement on the trustee's motion and after notice and a hearing. The bankruptcy court must consider all "factors relevant to a full and fair assessment of the wisdom of the proposed compromise." *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968). In other words, the bankruptcy court must find that the settlement is "fair and equitable" in order to approve it. *Martin v. Kane (In re A & C Props.)*, 784 F.2d 1377, 1381 (9th Cir. 1986).

In conducting this inquiry, the bankruptcy court must consider the following factors:

> (a) the probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

Id.

The bankruptcy court enjoys broad discretion in approving a compromise because it "is uniquely situated to consider the equities and reasonableness." *United States v. Alaska Nat'l Bank (In re Walsh Construction, Inc.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). As stated in *A & C Props*.:

> The purpose of a compromise agreement is to allow the trustee and the creditors to avoid the expenses and burdens associated with litigating sharply contested and dubious claims. The law favors compromise and not litigation for its own sake, and as long as the bankruptcy court amply

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CONT... Mark Bastorous and Bernadette Shenouda **Chapter 7**

considered the various factors that determined the reasonableness of the compromise, the court's decision must be affirmed.

Here, the legal analysis presented in the motion is skeletal and lacking in any detail that would afford the Court basis to grant the motion. It is not at all clear how this settlement is in the best interests of the estate, or how any of the *A&C Properties* factors weigh in favor of granting the motion. Notably, given the previous argumentation made in this case, including in the motion to substitute Defendant's Spouse for Defendant in the adversary proceeding, and given the Court's rulings on the compromise motion and the motion to substitute defendant, it is not clear what the basis of Defendant's argument is, nor does it appear that the costs to litigate that dispute would be anywhere near the reduction in the settlement payment contemplated by this compromise motion.

TENTATIVE RULING

Trustee to address points raised above.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Mark Bastorous — Represented By
Thomas F Nowland

Joint Debtor(s):

Bernadette Shenouda — Represented By
Thomas F Nowland

Trustee(s):

John P Pringle (TR) — Represented By
David M Goodrich
Reem J Bello

11:00 AM

6:19-10556 Timothy Mark Aitken and Esmeralda Aitken **Chapter 7**

#3.10 CONT. Motion to Convert Case From Chapter 7 to 13
(Motion filed 3/26/22)

From: 4/27/22

(Placed on calendar by order entered 3/29/22)

EH__

Docket 132

Tentative Ruling:

BACKGROUND

On January 23, 2019, Timothy Mark Aitken and Esmeralda Aitken (collectively, "Debtors") filed a *pro se* Chapter 7 voluntary petition.

On March 3, 2020, Trustee filed a fraudulent transfer adversary complaint against Debtors' daughter, Alicia Aitken ("Alicia"). The clerk entered default against Alicia on April 14, 2020. Trustee subsequently filed a motion for default judgment, and Alicia filed an opposition to the motion. On October 5, 2020, the Court denied the motion for default judgment without prejudice.

On November 23, 2020, Trustee filed a second motion for default judgment, and Alicia took no action to oppose the motion, nor did she take any action seeking to vacate the default. On January 5, 2021, the Court granted the second motion for default judgment, avoiding a transfer of real property located at 6919 Elmwood Rd., San Bernardino, CA 92404 ("Property") from Debtors to Alicia.

On September 23, 2021, Alicia filed a motion to vacate default, and Trustee opposed the motion. On November 10, 2021, the Court denied the motion to vacate default. Alicia appealed the order, and the appeal is currently pending before the district court.

In the main bankruptcy case, Trustee filed an objection to Debtors' homestead exemption on January 7, 2021. The Court sustained the objection without opposition on February 5,

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CONT... Timothy Mark Aitken and Esmeralda Aitken **Chapter 7**

2021.

On January 5, 2022, Trustee filed a motion for turnover of the Property, seeking an order: (1) requiring Debtors to cooperate with the Trustee in providing access to the Property; and (2) if reasonable access is not provided, then authorizing USMS to evict Debtors. On March 1, 2022, the Court entered an order granting the turnover motion.

On January 26, 2022, Debtors filed a motion to convert their case to Chapter 13. On March 2, 2022, Trustee filed an opposition to the Motion. On March 12, 2022, Debtors filed a reply. On March 22, 2022, the Court denied the motion to convert case without prejudice.

On March 26, 2022, Debtors filed a second motion to convert their case to Chapter 13 ("Motion"). [Dkt. No. 138]. On March 29, 2022, the Court set the matter for hearing on April 27, 2022. [Dkt. No. 139]. On April 6, 2022, Debtors filed a brief arguing that: (1) Debtors' case has not been previously converted; (2) Debtors' unsecured and secured debts are below the threshold debt levels for Chapter 13; and (3) Debtors have regular income through social security benefits, and Esmeralda Aitken's income has improved to an amount of approximately $35,000. [Dkt. No. 142, Timothy Aitken Decl. ¶4].

On April 13, 2022, Trustee filed an opposition to the Motion ("Opposition"), stating that: (1) Debtors lack regular, disposable income sufficient to fund a plan; and (2) Debtors lack the requisite good faith to convert their case. [Dkt. No. 143].

On April 20, 2022, Debtors filed a reply ("Reply"), providing Esmeralda Aitken's declaration that her income over the last months is approximately around $40,000, and a copy of her commission statement and check. [Dkt. No. 149]. Debtors also argue that they filed the Motion in good faith because: (1) they made mistakes because they were pro se; (2) they could have waited six months for the statutory period of two years to lapse if they really intended to hide the transaction, but they did not; and (3) they could have fully claimed a homestead exemption of the Property at the time of bankruptcy filing. *Id.*

DISCUSSION

11 U.S.C. § 706(a), (d) provide:

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CONT... Timothy Mark Aitken and Esmeralda Aitken **Chapter 7**

The debtor may convert a case under this chapter to a case under chapter 11, 12, or 13 of this title at any time, if the case has not been converted under section 1112, 1208, or 1307 of this title. Any waiver of the right to convert a case under this subsection is unenforceable.

Notwithstanding any other provision of this section, a case may not be converted to a case under another chapter of this title unless the debtor may be a debtor under such chapter.

Debtors not having previously converted the case, Debtors have the right to convert so long as Debtors are eligible to be Chapter 13 debtors.

The majority of case laws indicates that the Court need not engage in a factual inquiry into eligibility unless it is clear from the record that Debtors' may be ineligible. *See, e.g.*, *In re Pricer*, 2009 WL 2855801 at *3 (Bankr. D.D.C. 2009) ("Section 706(d) does not require that, before a case will be converted under § 706(a) to chapter 13, the court must require the debtor to put on proof of eligibility and that the court will make an adjudication regarding eligibility that is binding on creditors."); *In re Condon*, 358 B.R. 317, 326 (B.A.P. 6th Cir. 2007); *In re Wampler*, 302 B.R. 601, 605 (Bankr. S.D. Ind. 2003) (party challenging conversion bears burden).

Per *Marrama v. Citizens Bank*, 549 U.S. 365 (2007), the right to convert under § 706 (a) is not absolute. In *Marrama*, the debtor listed the subject property as having a value of zero and did not disclose that it had been transferred. *Id.* at 368. When the Chapter 7 Trustee in *Marrama* sought to sell the property, the debtor then attempted to convert his case to chapter 13 to frustrate the Trustee's efforts to sell. *Id.* The Supreme Court subsequently upheld the bankruptcy court's denial of the request to convert based on the findings of bad faith conduct. *Id.* at 380-82.

In this case, Debtors' unsecured and secured debts fall below the threshold debt levels for Chapter 13, but it does not appear Debtors have demonstrated sufficient regular income to make any chapter 13 plan payment, much less a 100% that the best interests of creditors test requires.

Here, Debtors' Schedule J shows monthly expenses of $4,260, but Debtors only have $2,198 in social security plus an amount from Esmeralda Aitken's work as a relator that is unclear but appears to be approximately $2,554.20 per month over a 7-month period.

11:00 AM

CONT... Timothy Mark Aitken and Esmeralda Aitken **Chapter 7**

After taxes, it thus does not appear there will be any disposable funds left to make a plan payment. [Dkt. No. 1].

As to the bad faith factors stated in *In re Leavitt*, 171 F.3d 1219 (9th Cir. 1999) and *Marrama*, Debtors argue that: (1) they made mistakes because they were pro se and could not financially afford an attorney; (2) the Property transaction happened one and a half year ago before the bankruptcy filing, and they could have waited six months for the statutory period of two years to lapse if they really intended to hide the transaction; and (3) they could have fully claimed an homestead exemption of the Property at the time of bankruptcy filing. *Id.*

The Court finds that Debtors' arguments are not persuasive or sufficient to provide that they filed the motion in good faith because Debtors could not have known about the statutory period or the homestead exemption before or at the time of filing the bankruptcy. Most importantly, they did not file bankruptcy after two years of the Property transaction and did not disclose the Property or claim the homestead exemption of the Property. Whatever they could have done to hide the Property transaction does not show that Debtors filed the Motion in good faith.

Moreover, Debtors do not discuss the bad faith factors that the Court previously noted in denying Debtors' first motion to convert the case. In this case, (1) the Property was not listed in Debtors' Schedules A and B; (2) the transfer of the Property was not disclosed in the Statement of Financial Affairs for Individuals Filing for Bankruptcy; and (3) the "gift" of equity to Debtors' daughter in connection with the sale of the Property was not disclosed in in the Statement of Financial Affairs for Individuals Filing for Bankruptcy. In addition, while subsequent to the petition date, the Court notes that the Trustee obtained an avoidance judgment finding actual fraudulent intent by Debtors, and Debtors waited three years after the petition date to file the Motion and after extensive services by the Trustee and commensurate administrative expenses. In other words, the only basis to convert is to avoid the sale of the Property, not a legitimate good faith effort to pay creditors.

TENTATIVE RULING

Based on the foregoing, the Court is inclined to DENY the Motion, finding bad faith on the part of the Debtors in connection with the bankruptcy filing.

11:00 AM
CONT... Timothy Mark Aitken and Esmeralda Aitken **Chapter 7**

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Timothy Mark Aitken — Represented By
Michael Okayo
Larry D Simons

Joint Debtor(s):

Esmeralda Aitken — Represented By
Michael Okayo
Larry D Simons

Movant(s):

Timothy Mark Aitken — Represented By
Michael Okayo
Larry D Simons

Esmeralda Aitken — Represented By
Michael Okayo
Larry D Simons

Trustee(s):

Howard B Grobstein (TR) — Represented By
Larry D Simons
Michael Okayo

United States Bankruptcy Court
Central District of California
Riverside
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Courtroom 301 Calendar

Wednesday, May 4, 2022 **Hearing Room 301**

2:00 PM
6:14-22067 Gary S. Hann **Chapter 7**
Adv#: 6:21-01018 Hann v. Sakaya et al

#4.00

CONT. Plaintiff's Motion for Default Judgment

[Holding Date]

From: 4/20/21,6/8/21,1/18/22, 4/6/22

EH__

[Case transferred from Judge Mark Wallace on 2/24/22]

[Tele. appr. Gary Hann, pro se Plaintiff]

Docket 6

Tentative Ruling:

5/4/2022

BACKGROUND

On September 27, 2014, Gary Hann ("Plaintiff") filed a Chapter 7 voluntary petition. On January 12, 2015, Debtor received his discharge. On September 21, 2015, the bankruptcy case was closed.

On February 5, 2021, Gary Hann filed a complaint against: (1) Francis Sakaya, Jacqueline Mbwille and Babalao Investors LLC (collectively, the "Sakaya Defendants"); and (2) Collis, Griffor & Hendra PC and Stuart Collis (collectively, the "Collis Defendants") (collectively, with the Sakaya Defendants, the "Defendants"). On March 10, 2021, the Collis Defendants filed a motion to dismiss for failure to state a claim. Without actually seeking entry of default, Plaintiff filed a motion for default judgment on March 19, 2021. On April 6, 2021, the Sakaya Defendants filed a joinder to the motion to dismiss filed by the Collis Defendants. On April 14, 2021, the Collis Defendants were dismissed from the case upon stipulation with Plaintiff. On May 4, 2021, Plaintiff filed a

motion for summary judgment against the Sakaya Defendants. On May 24, 2021, counsel for the Sakaya Defendants, Todd Turoci, withdrew from the case, although Court authorization for the withdrawal was not sought.

Since May 2021, the three pending motions have been continued several times and mediation sessions were scheduled in this adversary, as well as other adversaries also arising out of the main bankruptcy case. The Sakaya Defendants have not filed anything with the Court since their counsel withdrew from the case.

DISCUSSION

I. *WITHDRAWAL OF TODD TUROCI AS COUNSEL TO SAKAYA DEFENDANTS*

Local Rule 2091-1(a) requires that an attorney's request for withdrawal requires a motion when that withdrawal leaves the client in *pro se*. Here, Todd Turoci's withdrawal from representing the Sakaya Defendants, not having been approved by the Court, does not comply with the Local Rules. Furthermore, the Court notes that under Local Rule 9011-2(a), business entities, including limited liability companies, may not appear in a proceeding in *pro se*, and that Local Rule 2091-1(d) requires that an attorney seeking to withdraw, without substitution, from representation of a business entity must explain this consequence to the entity. Local Rule 2091-1(d) does not appear to have been complied with in the instant case.

II. Plaintiff's Motion for Default Judgment

Local Rule 7055-1(b)(1)(A) provides that a motion for default judgment must state the identity of the party against whom default was entered and the date of entry of default. Here, Plaintiff's motion was not able to specify against whom and when default was entered because Plaintiff did not seek entry of default against any party. The Court does note that the form motion used by Plaintiff is rather misleading because it contains a box allowing the movant to request entry of default when filing the motion for default judgment. The purpose of this option is less than clear given that the Court also has a mandatory form (F 7055-1.1.REQ.ENTER.DEFAULT) for seeking entry of default, which implies that a plaintiff cannot simply check the box in the motion for default judgment to effect a request for the entry of default.

"Entry of default, which precludes a party from contesting liability, is a prerequisite to, but independent of, entry of default judgment, which decides all aspects of litigation. The entry of default normally is a ministerial task for the Clerk of the Court." *Consultica Software Servs., Inc. v. Lootsie, Inc.*, 2018 WL 6039862 at *1 (C.D. Cal. 2018) (citations omitted and quotations omitted, paragraph break removed). In accordance with the foregoing, if Plaintiff seeks to have this Court render a final judgment on the motion for default judgment, the Court will require that Plaintiff seek entry of default using the Court's mandatory process. In the interim, the motion for default judgment is to be denied as premature.

III. Sakaya Defendants' Joinder to Motion to Dismiss

While the Collis Defendants have been dismissed from this action, the Sakaya Defendants, who filed a joinder to the motion to dismiss filed by the Collis Defendants, are still defendants. This leaves the procedural status of the pending motion to dismiss murky. The Court does not consider the joinder as a separate request for relief because requests for relief must be made by motion and the joinder does not satisfy the basic requirements of a motion. *See* FED. R. BANKR. P. Rule 9013 ("A request for an order, except when an application is authorized by these rules, shall be by written motion, unless made during a hearing. The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought."); Local Rule 9013-1 (outlining requirements for motions); *see also Conway v. Biloxi Public School Dist.*, 2020 WL 7409067 at *1 ("The Court finds that the School District should make any request for 12(b)(6) dismissal in a separate Motion pursuant to Local Rule 7(b) rather than incorporated in its Answer or a Joinder to another party's Motion."); *Jolly v. Hoegh Autoliners Shipping AS*, 2020 WL 6505037 (M.D Fla. 2020) (striking joinders to motion to dismiss as not properly raising a request for relief); *see generally Tatung Co., Ltd. V. Shu Tze Hsu*, 217 F. Supp. 3d 1138, 1151 (C.D. Cal. 2016) ("When reviewing whether to allow a party to join in a motion, the court will allow the joinder when either (1) the parties are so similarly situated that filing an independent motion would be redundant, or (2) the party seeking joinder specifically points out: which parts of the motion apply to the joining party, the joining party's basis for standing, and the factual similarities between the joining party and moving party that give rise to a similar claim or defense.").

Assuming, *arguendo*, that the motion to dismiss filed by the Collis Defendants survived

the dismissal of those defendants, a quick review of the motion indicates that it must be denied. The Collis Defendants raised four arguments in the motion to dismiss. The second and third arguments are raised as to "claims against the Collis & Griffor Defendants." [Dkt. No. 4, pg. 13, lines 16-17 and pg. 12, lines 24-26]. As such, these arguments do not apply to the Sakaya Defendants and, after the dismissal of the Collis Defendants, are moot. The first argument, that Plaintiff's claims are barred by the Rooker-Feldman doctrine, must also fail because that argument rests upon unsupported factual assertions. Specifically, the argument relates to the details and outcome of state court proceedings in Michigan, yet the motion contains no evidence whatsoever in support of the requests. Finally, the fourth argument, that the proper plaintiff is a Roth IRA, is incorrect as a matter of law. *See In re Lakeview Dev. Corp.*, 614 B.R. 603, 610 (Bankr. D. Col. 2020) (IRA is not a separate legal entity and "the individual owner is the real party in interest") (collecting cases). On this basis, the Court is inclined to DENY the motion to dismiss.

IV. Plaintiff's Motion for Summary Judgment

As a preliminary matter, the Court notes that proof of service of Plaintiff's summary judgment was signed by Plaintiff himself, in violation of the instructions on the proof of service. The Court does note, however, that there is nothing in the Local Rules or Federal Rules that prohibits a party from signing their own proof of service. *See, e.g.*, *Oliver v. Minor*, 39 F.3d 1188 (9th Cir. 1994) ("Rule 5 of the Federal Rules of Civil Procedure does not prohibit parties to the action from serving and signing their own proofs of service.").

Importantly, however, Plaintiff has repeatedly asserted in this action that he does not consent to entry of a final judgment, including in the complaint itself and in the most recent status report. Therefore, the Court will require Plaintiff to brief the issue of whether the Court has jurisdiction to enter a final judgment or to explicitly consent to a final judgment being entered, prior to issuance a final order.

TENTATIVE RULING

For the foregoing reasons, the Court is inclined to DENY the motion to dismiss and the motion for default judgment, and CONTINUE the hearing on the motion for summary judgment for Plaintiff to: (1) brief the issue of the Court's jurisdiction; or (2) consent to the entry of a final judgment; and (3) seek entry of default, if desired.

2:00 PM
CONT... Gary S. Hann **Chapter 7**

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Gary S. Hann	Pro Se

Defendant(s):

Francis P Sakaya	Represented By Todd L Turoci
Jacqueline Mbwille	Represented By Todd L Turoci
Babalao Investors LLC	Represented By Todd L Turoci
Collis Griffor & Hendra PC	Represented By David D Samani
Stuart M Collis	Represented By David D Samani

Movant(s):

Gary S Hann	Pro Se

Plaintiff(s):

Gary S Hann	Pro Se

Trustee(s):

Karl T Anderson (TR)	Represented By Leonard M Shulman Melissa Davis Lowe

2:00 PM
6:14-22067 Gary S. Hann **Chapter 7**
Adv#: 6:21-01018 Hann v. Sakaya et al

#5.00

CONT. Hrg. on Defendants' Motion filed 3/10/21 to Dismiss Adversary Proceeding Pursuant to FRCP 12(b)(6)

[Holding Date]

From: 1/18/22

EH__

[Case transferred from Judge Mark Wallace on 2/24/22]

[Tele. appr. Gary Hann, pro se Plaintiff]

Docket 4

Tentative Ruling:

5/4/2022

BACKGROUND

On September 27, 2014, Gary Hann ("Plaintiff") filed a Chapter 7 voluntary petition. On January 12, 2015, Debtor received his discharge. On September 21, 2015, the bankruptcy case was closed.

On February 5, 2021, Gary Hann filed a complaint against: (1) Francis Sakaya, Jacqueline Mbwille and Babalao Investors LLC (collectively, the "Sakaya Defendants"); and (2) Collis, Griffor & Hendra PC and Stuart Collis (collectively, the "Collis Defendants") (collectively, with the Sakaya Defendants, the "Defendants"). On March 10, 2021, the Collis Defendants filed a motion to dismiss for failure to state a claim. Without actually seeking entry of default, Plaintiff filed a motion for default judgment on March 19, 2021. On April 6, 2021, the Sakaya Defendants filed a joinder to the motion

to dismiss filed by the Collis Defendants. On April 14, 2021, the Collis Defendants were dismissed from the case upon stipulation with Plaintiff. On May 4, 2021, Plaintiff filed a motion for summary judgment against the Sakaya Defendants. On May 24, 2021, counsel for the Sakaya Defendants, Todd Turoci, withdrew from the case, although Court authorization for the withdrawal was not sought.

Since May 2021, the three pending motions have been continued several times and mediation sessions were scheduled in this adversary, as well as other adversaries also arising out of the main bankruptcy case. The Sakaya Defendants have not filed anything with the Court since their counsel withdrew from the case.

DISCUSSION

I. *WITHDRAWAL OF TODD TUROCI AS COUNSEL TO SAKAYA DEFENDANTS*

Local Rule 2091-1(a) requires that an attorney's request for withdrawal requires a motion when that withdrawal leaves the client in *pro se*. Here, Todd Turoci's withdrawal from representing the Sakaya Defendants, not having been approved by the Court, does not comply with the Local Rules. Furthermore, the Court notes that under Local Rule 9011-2(a), business entities, including limited liability companies, may not appear in a proceeding in *pro se*, and that Local Rule 2091-1(d) requires that an attorney seeking to withdraw, without substitution, from representation of a business entity must explain this consequence to the entity. Local Rule 2091-1(d) does not appear to have been complied with in the instant case.

II. Plaintiff's Motion for Default Judgment

Local Rule 7055-1(b)(1)(A) provides that a motion for default judgment must state the identity of the party against whom default was entered and the date of entry of default. Here, Plaintiff's motion was not able to specify against whom and when default was entered because Plaintiff did not seek entry of default against any party. The Court does note that the form motion used by Plaintiff is rather misleading because it contains a box allowing the movant to request entry of default when filing the motion for default judgment. The purpose of this option is less than clear given that the Court also has a mandatory form (F 7055-1.1.REQ.ENTER.DEFAULT) for seeking entry of default,

which implies that a plaintiff cannot simply check the box in the motion for default judgment to effect a request for the entry of default.

"Entry of default, which precludes a party from contesting liability, is a prerequisite to, but independent of, entry of default judgment, which decides all aspects of litigation. The entry of default normally is a ministerial task for the Clerk of the Court." *Consultica Software Servs., Inc. v. Lootsie, Inc.*, 2018 WL 6039862 at *1 (C.D. Cal. 2018) (citations omitted and quotations omitted, paragraph break removed). In accordance with the foregoing, if Plaintiff seeks to have this Court render a final judgment on the motion for default judgment, the Court will require that Plaintiff seek entry of default using the Court's mandatory process. In the interim, the motion for default judgment is to be denied as premature.

III. Sakaya Defendants' Joinder to Motion to Dismiss

While the Collis Defendants have been dismissed from this action, the Sakaya Defendants, who filed a joinder to the motion to dismiss filed by the Collis Defendants, are still defendants. This leaves the procedural status of the pending motion to dismiss murky. The Court does not consider the joinder as a separate request for relief because requests for relief must be made by motion and the joinder does not satisfy the basic requirements of a motion. *See* FED. R. BANKR. P. Rule 9013 ("A request for an order, except when an application is authorized by these rules, shall be by written motion, unless made during a hearing. The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought."); Local Rule 9013-1 (outlining requirements for motions); *see also Conway v. Biloxi Public School Dist.*, 2020 WL 7409067 at *1 ("The Court finds that the School District should make any request for 12(b)(6) dismissal in a separate Motion pursuant to Local Rule 7(b) rather than incorporated in its Answer or a Joinder to another party's Motion."); *Jolly v. Hoegh Autoliners Shipping AS*, 2020 WL 6505037 (M.D Fla. 2020) (striking joinders to motion to dismiss as not properly raising a request for relief); *see generally Tatung Co., Ltd. V. Shu Tze Hsu*, 217 F. Supp. 3d 1138, 1151 (C.D. Cal. 2016) ("When reviewing whether to allow a party to join in a motion, the court will allow the joinder when either (1) the parties are so similarly situated that filing an independent motion would be redundant, or (2) the party seeking joinder specifically points out: which parts of the motion apply to the joining party, the joining party's basis for standing, and the factual similarities between the joining party and moving party that give rise to a similar claim or defense.").

Assuming, *arguendo*, that the motion to dismiss filed by the Collis Defendants survived the dismissal of those defendants, a quick review of the motion indicates that it must be denied. The Collis Defendants raised four arguments in the motion to dismiss. The second and third arguments are raised as to "claims against the Collis & Griffor Defendants." [Dkt. No. 4, pg. 13, lines 16-17 and pg. 12, lines 24-26]. As such, these arguments do not apply to the Sakaya Defendants and, after the dismissal of the Collis Defendants, are moot. The first argument, that Plaintiff's claims are barred by the Rooker-Feldman doctrine, must also fail because that argument rests upon unsupported factual assertions. Specifically, the argument relates to the details and outcome of state court proceedings in Michigan, yet the motion contains no evidence whatsoever in support of the requests. Finally, the fourth argument, that the proper plaintiff is a Roth IRA, is incorrect as a matter of law. *See In re Lakeview Dev. Corp.*, 614 B.R. 603, 610 (Bankr. D. Col. 2020) (IRA is not a separate legal entity and "the individual owner is the real party in interest") (collecting cases). On this basis, the Court is inclined to DENY the motion to dismiss.

IV. Plaintiff's Motion for Summary Judgment

As a preliminary matter, the Court notes that proof of service of Plaintiff's summary judgment was signed by Plaintiff himself, in violation of the instructions on the proof of service. The Court does note, however, that there is nothing in the Local Rules or Federal Rules that prohibits a party from signing their own proof of service. *See, e.g.*, *Oliver v. Minor*, 39 F.3d 1188 (9th Cir. 1994) ("Rule 5 of the Federal Rules of Civil Procedure does not prohibit parties to the action from serving and signing their own proofs of service.").

Importantly, however, Plaintiff has repeatedly asserted in this action that he does not consent to entry of a final judgment, including in the complaint itself and in the most recent status report. Therefore, the Court will require Plaintiff to brief the issue of whether the Court has jurisdiction to enter a final judgment or to explicitly consent to a final judgment being entered, prior to issuance a final order.

TENTATIVE RULING

For the foregoing reasons, the Court is inclined to DENY the motion to dismiss and the motion for default judgment, and CONTINUE the hearing on the motion for summary

2:00 PM

CONT... Gary S. Hann **Chapter 7**

judgment for Plaintiff to: (1) brief the issue of the Court's jurisdiction; or (2) consent to the entry of a final judgment; and (3) seek entry of default, if desired.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Gary S. Hann	Pro Se

Defendant(s):

Francis P Sakaya	Represented By Todd L Turoci
Jacqueline Mbwille	Represented By Todd L Turoci
Babalao Investors LLC	Represented By Todd L Turoci
Collis Griffor & Hendra PC	Represented By David D Samani
Stuart M Collis	Represented By David D Samani

Movant(s):

Collis Griffor & Hendra PC	Represented By David D Samani
Stuart M Collis	Represented By David D Samani

Plaintiff(s):

Gary S Hann	Pro Se

Trustee(s):

Karl T Anderson (TR)	Represented By Leonard M Shulman

United States Bankruptcy Court
Central District of California
Riverside
Mark Houle, Presiding
Courtroom 301 Calendar

Wednesday, May 4, 2022 **Hearing Room 301**

2:00 PM

CONT... Gary S. Hann **Chapter 7**

Melissa Davis Lowe

2:00 PM
6:14-22067 Gary S. Hann **Chapter 7**
Adv#: 6:21-01018 Hann v. Sakaya et al

#6.00

CONT. Hrg. on Plaintiff's Motion For Summary Judgment under LBR 7056-, against Defendant Francis P. Sakaya, Jacqueline Mbwille, and Babalao Investors, LLC

[Holding Date]

From: 6/15/21,1/18/22, 4/6/22

EH__

[Case transferred from Judge Mark Wallace on 2/24/22]

[Tele. appr. Gary Hann, pro se Plaintiff]

Docket 19

Tentative Ruling:

5/4/2022

BACKGROUND

On September 27, 2014, Gary Hann ("Plaintiff") filed a Chapter 7 voluntary petition. On January 12, 2015, Debtor received his discharge. On September 21, 2015, the bankruptcy case was closed.

On February 5, 2021, Gary Hann filed a complaint against: (1) Francis Sakaya, Jacqueline Mbwille and Babalao Investors LLC (collectively, the "Sakaya Defendants"); and (2) Collis, Griffor & Hendra PC and Stuart Collis (collectively, the "Collis Defendants") (collectively, with the Sakaya Defendants, the "Defendants"). On March 10, 2021, the Collis Defendants filed a motion to dismiss for failure to state a claim. Without actually seeking entry of default, Plaintiff filed a motion for default judgment on March 19, 2021. On April 6, 2021, the Sakaya Defendants filed a joinder to the motion to dismiss filed by the Collis Defendants. On April 14, 2021, the Collis Defendants were

dismissed from the case upon stipulation with Plaintiff. On May 4, 2021, Plaintiff filed a motion for summary judgment against the Sakaya Defendants. On May 24, 2021, counsel for the Sakaya Defendants, Todd Turoci, withdrew from the case, although Court authorization for the withdrawal was not sought.

Since May 2021, the three pending motions have been continued several times and mediation sessions were scheduled in this adversary, as well as other adversaries also arising out of the main bankruptcy case. The Sakaya Defendants have not filed anything with the Court since their counsel withdrew from the case.

DISCUSSION

I. *WITHDRAWAL OF TODD TUROCI AS COUNSEL TO SAKAYA DEFENDANTS*

Local Rule 2091-1(a) requires that an attorney's request for withdrawal requires a motion when that withdrawal leaves the client in *pro se*. Here, Todd Turoci's withdrawal from representing the Sakaya Defendants, not having been approved by the Court, does not comply with the Local Rules. Furthermore, the Court notes that under Local Rule 9011-2(a), business entities, including limited liability companies, may not appear in a proceeding in *pro se*, and that Local Rule 2091-1(d) requires that an attorney seeking to withdraw, without substitution, from representation of a business entity must explain this consequence to the entity. Local Rule 2091-1(d) does not appear to have been complied with in the instant case.

II. Plaintiff's Motion for Default Judgment

Local Rule 7055-1(b)(1)(A) provides that a motion for default judgment must state the identity of the party against whom default was entered and the date of entry of default. Here, Plaintiff's motion was not able to specify against whom and when default was entered because Plaintiff did not seek entry of default against any party. The Court does note that the form motion used by Plaintiff is rather misleading because it contains a box allowing the movant to request entry of default when filing the motion for default judgment. The purpose of this option is less than clear given that the Court also has a mandatory form (F 7055-1.1.REQ.ENTER.DEFAULT) for seeking entry of default, which implies that a plaintiff cannot simply check the box in the motion for default

judgment to effect a request for the entry of default.

"Entry of default, which precludes a party from contesting liability, is a prerequisite to, but independent of, entry of default judgment, which decides all aspects of litigation. The entry of default normally is a ministerial task for the Clerk of the Court." *Consultica Software Servs., Inc. v. Lootsie, Inc.*, 2018 WL 6039862 at *1 (C.D. Cal. 2018) (citations omitted and quotations omitted, paragraph break removed). In accordance with the foregoing, if Plaintiff seeks to have this Court render a final judgment on the motion for default judgment, the Court will require that Plaintiff seek entry of default using the Court's mandatory process. In the interim, the motion for default judgment is to be denied as premature.

III. Sakaya Defendants' Joinder to Motion to Dismiss

While the Collis Defendants have been dismissed from this action, the Sakaya Defendants, who filed a joinder to the motion to dismiss filed by the Collis Defendants, are still defendants. This leaves the procedural status of the pending motion to dismiss murky. The Court does not consider the joinder as a separate request for relief because requests for relief must be made by motion and the joinder does not satisfy the basic requirements of a motion. *See* FED. R. BANKR. P. Rule 9013 ("A request for an order, except when an application is authorized by these rules, shall be by written motion, unless made during a hearing. The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought."); Local Rule 9013-1 (outlining requirements for motions); *see also Conway v. Biloxi Public School Dist.*, 2020 WL 7409067 at *1 ("The Court finds that the School District should make any request for 12(b)(6) dismissal in a separate Motion pursuant to Local Rule 7(b) rather than incorporated in its Answer or a Joinder to another party's Motion."); *Jolly v. Hoegh Autoliners Shipping AS*, 2020 WL 6505037 (M.D Fla. 2020) (striking joinders to motion to dismiss as not properly raising a request for relief); *see generally Tatung Co., Ltd. V. Shu Tze Hsu*, 217 F. Supp. 3d 1138, 1151 (C.D. Cal. 2016) ("When reviewing whether to allow a party to join in a motion, the court will allow the joinder when either (1) the parties are so similarly situated that filing an independent motion would be redundant, or (2) the party seeking joinder specifically points out: which parts of the motion apply to the joining party, the joining party's basis for standing, and the factual similarities between the joining party and moving party that give rise to a similar claim or defense.").

Assuming, *arguendo*, that the motion to dismiss filed by the Collis Defendants survived the dismissal of those defendants, a quick review of the motion indicates that it must be denied. The Collis Defendants raised four arguments in the motion to dismiss. The second and third arguments are raised as to "claims against the Collis & Griffor Defendants." [Dkt. No. 4, pg. 13, lines 16-17 and pg. 12, lines 24-26]. As such, these arguments do not apply to the Sakaya Defendants and, after the dismissal of the Collis Defendants, are moot. The first argument, that Plaintiff's claims are barred by the Rooker-Feldman doctrine, must also fail because that argument rests upon unsupported factual assertions. Specifically, the argument relates to the details and outcome of state court proceedings in Michigan, yet the motion contains no evidence whatsoever in support of the requests. Finally, the fourth argument, that the proper plaintiff is a Roth IRA, is incorrect as a matter of law. *See In re Lakeview Dev. Corp.*, 614 B.R. 603, 610 (Bankr. D. Col. 2020) (IRA is not a separate legal entity and "the individual owner is the real party in interest") (collecting cases). On this basis, the Court is inclined to DENY the motion to dismiss.

IV. Plaintiff's Motion for Summary Judgment

As a preliminary matter, the Court notes that proof of service of Plaintiff's summary judgment was signed by Plaintiff himself, in violation of the instructions on the proof of service. The Court does note, however, that there is nothing in the Local Rules or Federal Rules that prohibits a party from signing their own proof of service. *See, e.g.*, *Oliver v. Minor*, 39 F.3d 1188 (9th Cir. 1994) ("Rule 5 of the Federal Rules of Civil Procedure does not prohibit parties to the action from serving and signing their own proofs of service.").

Importantly, however, Plaintiff has repeatedly asserted in this action that he does not consent to entry of a final judgment, including in the complaint itself and in the most recent status report. Therefore, the Court will require Plaintiff to brief the issue of whether the Court has jurisdiction to enter a final judgment or to explicitly consent to a final judgment being entered, prior to issuance a final order.

TENTATIVE RULING

For the foregoing reasons, the Court is inclined to DENY the motion to dismiss and the motion for default judgment, and CONTINUE the hearing on the motion for summary judgment for Plaintiff to: (1) brief the issue of the Court's jurisdiction; or (2) consent to

2:00 PM

CONT... Gary S. Hann **Chapter 7**

the entry of a final judgment; and (3) seek entry of default, if desired.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Gary S. Hann	Pro Se

Defendant(s):

Francis P Sakaya	Represented By Todd L Turoci
Jacqueline Mbwille	Represented By Todd L Turoci
Babalao Investors LLC	Represented By Todd L Turoci
Collis Griffor & Hendra PC	Represented By David D Samani
Stuart M Collis	Represented By David D Samani

Plaintiff(s):

Gary S Hann	Pro Se

Trustee(s):

Karl T Anderson (TR)	Represented By Leonard M Shulman Melissa Davis Lowe

United States Bankruptcy Court
Central District of California
Riverside
Mark Houle, Presiding
Courtroom 301 Calendar

Wednesday, May 4, 2022 **Hearing Room 301**

2:00 PM

6:14-22067 Gary S. Hann **Chapter 7**

Adv#: 6:21-01018 Hann v. Sakaya et al

#7.00

CONT. STATUS CONFERENCE re: Complaint by Gary S Hann against Francis P Sakaya , Jacqueline Mbwille , Babalao Investors LLC, Collis Griffor & Hendra PC , Stuart M Collis. ($350.00 Fee Not Required). (Attachments: #(1) Part 2 of 4 #(2) Part 3 of 4 #(3) Part 4 of 4) Nature of Suit: (11 (Recovery of money/property - 542 turnover of property)) ,(21 (Validity, priority or extent of lien or other interest in property)) ,(72 (Injunctive relief - other)) ,(91 (Declaratory judgment))

[Holding Date]

From: 4/20/21,6/8/21,1/18/22, 4/6/22

EH__

[Tele. appr. Gary Hann, pro se Plaintiff]

Docket 1

Tentative Ruling:

APPEARANCES REQUIRED.

The Court will inquire into the Parties' progress in arranging for mediation.

Party Information

Debtor(s):

Gary S. Hann Pro Se

Defendant(s):

Francis P Sakaya Represented By

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CONT... Gary S. Hann **Chapter 7**

	Todd L Turoci
Jacqueline Mbwille	Represented By Todd L Turoci
Babalao Investors LLC	Represented By Todd L Turoci
Collis Griffor & Hendra PC	Represented By David D Samani
Stuart M Collis	Represented By David D Samani

Plaintiff(s):

Gary S Hann	Pro Se

Trustee(s):

Karl T Anderson (TR)	Represented By Leonard M Shulman Melissa Davis Lowe

United States Bankruptcy Court
Central District of California
Riverside
Mark Houle, Presiding
Courtroom 301 Calendar

Wednesday, May 4, 2022 **Hearing Room 301**

2:00 PM

6:21-11740 Yvonne Miranda **Chapter 7**

Adv#: 6:21-01074 Fisher v. Miranda et al

#8.00 CONT. Status Conference RE: [1] Adversary case 6:21-ap-01074. Complaint by Mark Lee Fisher against Yvonne Miranda, Linda Juarez. false pretenses, false representation, actual fraud))

From: 9/8/21,10/13/21,3/16/22

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 7/6/22 BY ORDER ENTERED 3/15/22**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Yvonne Miranda — Represented By Freddie V Vega

Defendant(s):

Yvonne Miranda — Represented By Todd L Turoci

Linda Juarez — Represented By Todd L Turoci

Joint Debtor(s):

Linda Juarez — Represented By Freddie V Vega

Plaintiff(s):

Mark Lee Fisher — Represented By Erik Hammett

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CONT... Yvonne Miranda **Chapter 7**

Trustee(s):

Howard B Grobstein (TR) Pro Se

United States Bankruptcy Court
Central District of California
Riverside
Mark Houle, Presiding
Courtroom 301 Calendar

Wednesday, May 4, 2022 **Hearing Room 301**

2:00 PM

6:21-15079 Mario A. Gomez **Chapter 7**

Adv#: 6:22-01011 United States Trustee for the Central District of v. Gomez

#9.00 Status Conference re Complaint by United States Trustee for the Central District of California, Region 16 against Mario A. Gomez. ($350.00 Fee Not Required). Nature of Suit: (41 (Objection / revocation of discharge - 727(c),(d),(e))) (Complaint filed 2/24/22)

EH__

Docket 1

***** VACATED *** REASON: ORDER APPROVING RESOLUTION OF CASE ENTERED 4/26/22**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mario A. Gomez	Represented By Michael Smith

Defendant(s):

Mario A. Gomez	Pro Se

Plaintiff(s):

United States Trustee for the Central	Represented By Cameron C Ridley

Trustee(s):

Todd A. Frealy (TR)	Pro Se