Case No. 22-60019

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

In re THOMAS OLIVER, Debtor.

THOMAS OLIVER, Appellant,
v.
UNITED STATES TRUSTEE, Appellee.

ON APPEAL FROM THE UNITED STATES
BANKRUPTCY APPELLATE PANEL FOR THE NINTH CIRCUIT

BRIEF OF APPELLEE TIFFANY L. CARROLL, ACTING UNITED STATES TRUSTEE

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STATEMENT REGARDING ORAL ARGUMENT

The United States Trustee does not believe oral argument is necessary because the issues are straightforward and uncomplicated. However, the United States Trustee will participate in oral argument if it would assist the panel.

JURISDICTIONAL STATEMENT

The bankruptcy court had jurisdiction under 28 U.S.C. §§ 157(a) and (b), and 1334(a), over the chapter 7 bankruptcy case of appellant, Mr. Thomas Oliver, and over the complaint of the United States Trustee to deny Mr. Oliver a discharge of his debts. The bankruptcy court's August 4, 2021, order denying Mr. Oliver's discharge was a final order. *See Caneva v. Sun Cmty. Operating LP (In re Caneva)*, 550 F.3d 755, 758 n.1 (9th Cir. 2008) (holding that order denying debtor's discharge was final).

Mr. Oliver filed a timely notice of appeal of the final order denying his discharge on August 16, 2021. 2-ER-37-38.[1] The bankruptcy appellate panel had jurisdiction to hear Mr. Oliver's appeal under 28 U.S.C. § 158(c)(1), which grants bankruptcy appellate panels authority to hear appeals from final judgments, orders, and decrees of bankruptcy judges. It affirmed the bankruptcy court's order on June 24, 2022. 1-ER-2-24.[2]

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[1] Citations to "[volume number]-ER-[page number(s)]" are to the United States Trustee's Excerpts of Record and the relevant page number(s).

[2] Mr. Oliver had previously appealed the entry of default, 2-ER-57-58, which resulted in Case No. 21-1151 before the bankruptcy appellate panel. The bankruptcy appellate panel issued an order questioning the finality of that order (ECF No. 5 in 21-1151), and subsequently provided for joint briefing of the two appeals. ECF No. 21 in

Mr. Oliver timely filed a notice of appeal from the bankruptcy appellate panel's order on June 24, 2022. 3-ER-441; *see* Fed. R. App. P. 4(a)(1)(B); Fed. R. App. P. 6(b)(1). This Court has jurisdiction under 28 U.S.C. § 158(d)(1), which confers jurisdiction on courts of appeals from final decisions of the bankruptcy appellate panel in bankruptcy appeals.

STATEMENT OF THE ISSUE

Did the bankruptcy court abuse its discretion in striking Mr. Oliver's answer under Federal Rule of Bankruptcy Procedure 7037(b)(2) for his discovery violations and entering a default judgment denying Mr. Oliver a chapter 7 discharge under 11 U.S.C. §§ 727(a)(2) and (4)?

STATEMENT OF THE CASE

I. STATUTORY FRAMEWORK

A. Chapter 7 Cases and Denials of Discharge

A chapter 7 bankruptcy case, like the one at issue here, "gives an insolvent debtor the opportunity to discharge his debts by liquidating his assets to pay his creditors." *Law v. Siegel*, 571 U.S. 415, 417 (2014). A chapter 7 debtor who satisfies the requirements of the Bankruptcy Code generally will receive a discharge. 11 U.S.C.

21-1151 and ECF No. 18 in 21-1182. To the extent the appeal of the earlier entry of default order was interlocutory, it merged with the entry of the final order denying Mr. Oliver's discharge. *See Am. Ironworks & Erectors, Inc. v. N. Am. Const. Corp.*, 248 F.3d 892, 897 (9th Cir. 2001).

§ 727(a). A discharge releases a debtor from liability for debts that arose before the case was filed, with limited exceptions. *See* 11 U.S.C. §§ 727(b), 523(a).

In exchange, the prepetition property of a chapter 7 debtor becomes property of their bankruptcy estate and, unless it is exempt, will be distributed to creditors. *See* 11 U.S.C. § 541; *see also Schwab v. Reilly*, 560 U.S. 770, 783-85 (2010). For this exchange to work, debtors must provide a complete, honest, and accurate picture of their financial situation at the outset. *See* 11 U.S.C. § 521 (specifying some of a debtor's duties, e.g., providing "a list of creditors," "a schedule of assets and liabilities," "a schedule of current income and current expenditures," and "a statement of the debtor's financial affairs").

Accordingly, if debtors fail to provide complete and honest information about their financial circumstances, conceal property from the bankruptcy trustee, or fail to testify truthfully about their financial affairs, they may be denied a discharge. *See generally* 11 U.S.C. § 727(a). The chapter 7 trustee, a creditor, or the United States Trustee may object to the granting of a discharge on any of the grounds set forth in § 727(a). 11 U.S.C. § 727(c)(1).

The Bankruptcy Code provides twelve enumerated circumstances, two of which are at issue here, under which a bankruptcy court may deny a discharge. 11 U.S.C. § 727(a)(1)-(12). First, section 727(a)(2)(A) acts to deny a discharge to a debtor who, "with the intent to delay, hinder, or defraud a creditor or an officer of the estate charged with custody of property under this title, . . . transferred, removed, destroyed, mutilated,

or concealed" the debtor's property within one year before the filing of the bankruptcy petition. 11 U.S.C. § 727(a)(2)(A). Second, section 727(a)(4) prohibits a discharge to a debtor who, "knowingly and fraudulently, in or in connection with a case . . . made a false oath or account[.]" 11 U.S.C. § 727(a)(4)(A).

The plaintiff seeking to deny a discharge "need only prove one of the grounds for non-dischargeability under § 727(a) because the provisions are phrased in the disjunctive. Proof of conduct satisfying any one of the sub-sections is enough to justify a denial of a debtor's request for a discharge." *In re Krehl*, 86 F.3d 737, 744 (7th Cir. 1996) (internal citation omitted).

B. Federal Rule of Bankruptcy Procedure 7037

Federal Rule of Bankruptcy Procedure 7037 incorporates Federal Rule of Civil Procedure 37 in adversary proceedings.[3] Under Rule 37, the court may impose a variety of sanctions for discovery misconduct, including the entry of "a default judgment against the disobedient party" or a determination that alleged "facts be taken as established."

C. The Role of the United States Trustee

The United States Trustee is a Justice Department official appointed by the Attorney General to supervise the administration of bankruptcy cases. 28 U.S.C. §§ 581-589. The United States Trustee "may raise and may appear and be heard on any

[3] For ease of reference, the United States Trustee will simply refer to "Rule 37."

issue in any case or proceeding under this title but may not file a plan pursuant to section 1121(c) of this title." 11 U.S.C. § 307. The United States Trustee is expressly authorized to "object to the granting of a discharge." 11 U.S.C. § 727(c).

II. STATEMENT OF THE FACTS

A. Mr. Oliver Files for Voluntary Chapter 7 Relief

1. The schedules and statement of financial affairs

Mr. Thomas Oliver filed his voluntary pro se petition for chapter 7 bankruptcy relief on February 28, 2020. 3-ER-424. In his sworn Schedule A/B, which requires bankruptcy debtors to disclose their property, Mr. Oliver stated that he did not own or have any legal or equitable interest in any real property. 3-ER-391. Mr. Oliver also reported that he did not own or have any legal or equitable interest in the following: (i) bank accounts or deposits of money, (ii) intellectual property or copyrights, and (iii) claims against third parties. 3-ER-395-98.

In his sworn Schedule E/F, which requires debtors to list their unsecured creditors, Mr. Oliver listed only one creditor: "Alyssa Parent D.B.A. Sun Days Tanning Etc," with a nonpriority unsecured claim of $32,913.30. 3-ER-406. For the type of claim, Mr. Oliver described it as a "fraudulent court judgment." *Id.*

The Statement of Financial Affairs for Individuals Filing for Bankruptcy (the "SOFA"), asks various financial questions, which debtors must answer under penalty of perjury. *See* Fed. R. Bankr. P. Official Form 107. In response to Question No. 9 of the SOFA, which requires debtors to list lawsuits to which they were a party in the one

year preceding the bankruptcy filing, Mr. Oliver disclosed a lawsuit entitled, "Alyssa Parent v. Thomas Oliver," in the Washington County Superior Court in Wakefield, Rhode Island.[4] 3-ER-378. Mr. Oliver described the nature of the case as follows: "fraudulent foreign judgment. Criminal/ 'creditor' is trying to steal property (116 Rocky Brook Way, Wakefield, RI), but petitioner [Mr. Oliver] has not owned it since 2014." *Id.* In addition, in response to Question No. 18 of the SOFA, which requires debtors to disclose transfers of all property made within the two years preceding the bankruptcy filing, Mr. Oliver stated that he had made no such transfers. 3-ER-381.

2. Mr. Oliver's section 341 meeting of creditors

Section 341 of the Bankruptcy Code requires debtors to answer questions at a meeting of their creditors. In pertinent part, section 343 provides that the "debtor shall appear and submit to [this] examination under oath." 11 U.S.C. § 343. At his section 341 meeting of creditors, which was continued several times, Mr. Oliver affirmed under oath the accuracy of his schedules. *See* 3-ER-365 (Mr. Oliver affirming that the information in his schedules and statement of financial affairs was "full, complete, [and] accurate" and that he had listed all of his assets).

Mr. Oliver testified that he filed his chapter 7 case to stop what he referred to as "a foreign fraudulent judgment in Rhode Island apparently." 3-ER-359.

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[4] Mr. Oliver filed his original SOFA, unsigned, on March 10, 2020 (3-ER-393), and then filed an amended SOFA on March 19, 2020. 3-ER-371. The only change was that Mr. Oliver signed the document where required.

Mr. Oliver specifically disclaimed any interest in properties in Wakefield, Rhode Island and West Palm Beach, Florida. He asserted he had "list[ed] all of [his] interests in real property in the bankruptcy papers that [he] filed with the court." 3-ER-367. Regarding the Rhode Island property, Mr. Oliver testified that he transferred the Rhode Island property to his mother in 2014 for no consideration because he "wanted to," 3-ER-368, but that he did not record the deed on the property until much later, in either December 2019 or January 2020, and that he received rental income from managing the property, 3-ER-369. In fact, although the date appearing next to the signature of Mr. Oliver on the quitclaim deed conveying the Rhode Island property to his mother states "executed on this 18th day of July, 2014," the date appearing next to the signature of Mr. Oliver is January 31, 2020, and the deed contains the Acknowledgment of Notary Public indicating that Mr. Oliver signed the deed on January 31, 2020. 3-ER-324. The "deed bears what appears to be a stamp from the recorder of the Town of South Kingstown, Rhode Island indicating that it was recorded on February 19, 2020," *i.e.* ten days before he filed his bankruptcy petition. *Id.*

Mr. Oliver also testified that he had no ownership interest in another property located at 1860 My Place Lane in West Palm Beach, Florida, 3-ER-336-37, which was also owned by his mother, but that he received rental income from it. 3-ER-369-70. Mr. Oliver testified that he did not sign a deed granting the West Palm Beach property to his mother. 3-ER-336-37. But Mr. Oliver had "executed a Warranty Deed conveying the Palm Beach Property to his mother" on January 5, 2018. 3-ER-326. The 2018

Warranty Deed bears a stamp that appears to be from the Clerk of Palm Beach County evidencing that it was recorded on February 1, 2018." 3-ER-326.

Mr. Oliver also stated that he paid the mortgage "and all the business expenses for both rental properties" from which he earned income. 3-ER-344. Mr. Oliver said his income was deposited into and withdrawn from a checking account in his mother's name, an account on which he did not have signing authority but from which he was able to withdraw funds. 3-ER-355. Counsel for the United States Trustee noted that financial documentation had been requested from Mr. Oliver, including documentation in connection with transfers of real property, deeds, any agreements to manage real property or collect rent, bank statements, and supporting documentation for Mr. Oliver's tax return, but that most of it had not yet been provided. 3-ER-350-51.

Mr. Oliver was also asked whether he had published a book, and he indicated that he had co-authored a book entitled "Stack the Legal Odds in Your Favor: Understand America's Corrupt Judicial System," and Sara Naheedy was the co-author. 3-ER-332. Mr. Oliver confirmed that he had not disclosed his interest in the book in his bankruptcy case. 3-ER-333. He said he did not disclose it "because . . . there's been no income from it," *id.*, and he would receive income only after 300 copies had been sold. 3-ER-334.

B. The United States Trustee Files a Complaint Objecting to Mr. Oliver's Discharge Under 11 US.C. §§ 727(a)(2) and (a)(4)

After further investigation, the United States Trustee filed a complaint seeking to deny Mr. Oliver a discharge on two statutory grounds. 3-ER-317. The United States Trustee alleged that Mr. Oliver made fraudulent pre-petition transfers and made numerous false oaths related to the two properties, his bank accounts, and his book. 3-ER-327-29.

Mr. Oliver filed a one-paragraph answer that did not explicitly admit or deny the United States Trustee's allegations,[5] but rather, stated that he "is tired of the bullsh!t, corruption, and criminal acts from individuals in the U.S. legal system and from others who are connected to it" and demanded a jury trial. 3-ER-315.

C. The Discovery Process

As the adversary proceeded, Mr. Oliver refused to cooperate in all aspects of the discovery process. For example, as detailed below, he (1) sought irrelevant and burdensome discovery from the United States Trustee; (2) refused to meet and confer with the United States Trustee regarding initial discovery disclosures; (3) refused to participate in preparing the required joint Certificate of Compliance regarding discovery; (4) refused to provide sufficient responses to the United States Trustee's

[5] *See* Fed. R. Civ. P. 8(b)(1)-(2) (requiring answering party to "admit or deny the allegations asserted against it by an opposing party").

discovery requests, despite a court order requiring him to do so; and (5) failed to appear for a scheduled deposition, despite a court order requiring him to do so.

1. Mr. Oliver's discovery request and the United States Trustee's motion to quash

After the United States Trustee filed her complaint, Mr. Oliver sent a subpoena to the United States Trustee's counsel demanding "[e]lectronic records of all incoming and outgoing phone calls (number and duration of each call) to and from the office of the U.S. trustee from Jan. 1, 2020, to present." 3-ER-284. The United States Trustee filed a motion to quash the subpoena because it sought "irrelevant information and imposes an undue burden on the UST. Moreover, the production of the records demanded is improper under the Touhy regulations[6] because the demand is not in accordance with applicable civil discovery rules and because compliance with the Subpoena would require production of information and records that are protected by the attorney work product and attorney-client privileges." 3-ER-297.

Before the hearing on the motion to quash, the bankruptcy court held a pre-trial conference. During it, the court asked Mr. Oliver to clarify why he was unwilling to sign the "Certificate of Compliance with Early Conference of Counsel," a local pre-trial form required by L.R. 7016-1(c).[7] 3-ER-287. Mr. Oliver said he disagreed with several

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[6] *See* 28 C.F.R. § 16.21(a).

[7] The rule states: "All counsel and unrepresented parties must complete and jointly sign Local Form CSD 3018. No later than 7 days after the Early Conference, plaintiff's counsel must file and serve the completed Local Form CSD 3018 on all parties." The form requires the parties to an adversary to provide the court with basic information, such as whether all parties have been served, whether there have been settlement

parts of the form and that he questioned the ability of the bankruptcy court to enter a final judgment. 3-ER-288.[8] The court disagreed, 3-ER-291, then granted the United States Trustee's oral motion to extend the time to respond to the subpoena pending the motion to quash and continued the pre-trial status hearing to January 21, 2021. 3-ER-293-94.

At the hearing on the United States Trustee's motion to quash held on October 1, 2020, Mr. Oliver attempted to make certain arguments, despite his failure to comply with the local rule regarding oppositions. 3-ER-275-76. The court explained to Mr. Oliver that he had six days to file an opposition, but that he had failed to do so. 3-ER-280. Specifically, L.R. 9013-7(b)(1) requires that "all oppositions and responses to motions and applications must be in writing. Each opposition and response to a motion or application must be filed and served. Each opposition and response to a motion or application must include a complete statement of the reasons in opposition to or in support of the motion and evidence as necessary supporting the reasons including, but not limited to, Declarations."[9]

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efforts, what discovery dates the parties agree to, and whether the parties consent to entry of a final judgment by the bankruptcy court. *See* https://www.casb.uscourts.gov/sites/casb/files/documents/forms/CSD3018_0.pdf.

[8] Mr. Oliver also indicated that he was "very reluctant to sign anything until the jury trial demand is granted." 3-ER-288.

[9] https://www.casb.uscourts.gov/sites/casb/files/documents/local-rules/Lrules_Proceds.pdf.

The court rejected Mr. Oliver's arguments that he had not received the email service of the motion and that he only filed his bankruptcy case because he was "forced" to. 3-ER-279. The court also advised Mr. Oliver that he would be required to follow the same discovery rules that apply to all parties. Specifically, the court reminded Mr. Oliver that even if he "may have had financial consequences if [he] didn't file" his bankruptcy case, he was "not forced to file this case," and as a result he had "voluntarily commit[ed] [him]self to the rules in which a bankruptcy case is processed." *Id.* The court told Mr. Oliver that it would not "allow [him], in this adversary proceeding or any other part of the case, to say, oh, well, I'm just going to blow off the rules of the court because they're not convenient to me." *Id.* And the court warned Mr. Oliver that it expected him "to follow the rules as the court sets them down and are public, because [he is] just like every other litigant" and "[t]here are not special rules for people not represented by counsel." *Id.*

The court then granted the United States Trustee's motion to quash. 3-ER-273; 3-ER-282-83.

2. The United States Trustee's first motion to compel

Federal Rule of Bankruptcy Procedure 7026(a)(1) requires parties to a lawsuit in a bankruptcy case to provide basic initial disclosures to the other party. Mr. Oliver, however, did not provide the required disclosures by the court-ordered deadline. On November 2, 2020, the United States Trustee filed a motion asking the court to compel him to do so, along with the required certification under Federal Rule of Civil Procedure

26(c) detailing the efforts to resolve the issues before filing the motion.[10] 2-ER-250. Although the initial disclosures were due by September 30, 2020, the motion noted that "[a]s of the date of filing this Motion, the Plaintiff has not received any of the required Initial Disclosures from the Defendant." 2-ER-252. The motion alleged that the United States Trustee "had not received any of the required Initial Disclosures from the Defendant" even though "the UST attempted to meet and confer with the Defendant regarding the Initial Disclosures." *Id.* The United States Trustee also sought sanctions under Rule 37(a) for needing to bring the motion due to Mr. Oliver's failure to comply with the court order and with Federal Rule of Bankruptcy Procedure 7026(a)(1). 2-ER-254.

Mr. Oliver did not file an opposition, and on December 17, 2020, the court held a hearing. Counsel for the United States Trustee told the court she subsequently had received "some limited disclosures" but that Mr. Oliver had indicated he would not provide the last known addresses and telephone numbers for his witnesses.[11] 2-ER-211-12. Counsel for the United States Trustee also argued that Mr. Oliver had provided incomplete documents, with pages missing from eight different documents, and Mr.

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[10] The motion "must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action."

[11] Counsel for the United States Trustee told the court the reason Mr. Oliver gave for his refusal to provide the witness information was because the witnesses "do not live near the West Coast and that they would not wish to speak to" the United States Trustee. 2-ER-193.

Oliver's reason for not providing complete documents was because he "only plans to introduce into evidence the pages that were provided and therefore doesn't wish" to provide complete documents. 2-ER-212.

Mr. Oliver responded that he did not have the addresses of his trial witnesses, and that he did not intend to call witnesses but would instead submit only affidavits. *Id.* Mr. Oliver told the court he had obtained the affidavits from "a third party" and that he could not "force them" to provide the required information to him. 2-ER-214. The court found "no credibility" to Mr. Oliver's claimed inability to get addresses for his own witnesses, 2-ER-213, and indicated that any such affidavits would likely be rejected because the United States Trustee would be unable to cross-examine any of Mr. Oliver's witnesses. 2-ER-214.[12]

The court adopted its tentative ruling and granted the motion to compel. 2-ER-208-209. Regarding the incomplete documents, the court gave Mr. Oliver until December 31, 2020, to provide "complete copies of his Initial Disclosure documents" and, if he for any reason could not do so, to until January 8, 2021, to file a declaration detailing his efforts at obtaining the missing pages. 2-ER-208. And, after the United States Trustee's counsel submitted a declaration and supporting documentation, 2-ER-

[12] The only "witness" information Mr. Oliver provided was that of counsel for the United States Trustee, whom Mr. Oliver indicated he intended to call as a witness. 2-ER-216.

199, the court awarded the United States Trustee $2,199 in attorney's fees and costs associated with bringing the motion. 2-ER-196-97.

3. The United States Trustee's second motion to compel

The United States Trustee served interrogatories and a request for production of documents on Mr. Oliver under Federal Rules of Bankruptcy Procedure 7033 and 7034, which had a response date of November 26, 2020. 2-ER-220. Although Mr. Oliver provided a purported response on December 8, 2020, he "did not provide any responsive documents, other than a tax return previously produced" nor did he "make any documents available for inspection or copying." 2-ER-221. Instead, Mr. Oliver's responses consisted almost entirely of either "Unknown," "Objection: too overbroad and vague," or "Objection: date requested is beyond the limit set by law." 2-ER-230-31. For example, in response to the request for "Any and all documents relating to or evidencing any consideration you received in exchange for the transfer of the real property located at 1860 My Place Lane, West Palm Beach, Florida," Mr. Oliver responded with only, "Objection: too overbroad and vague." 2-ER-233. Likewise, in response to the request for "Any and all documents relating to or evidencing any monies owed to you or claimed by you in connection with the publication of the book 'Stack the Legal Odds in Your Favor: Understand America's Corrupt Judicial System,'" Mr. Oliver responded with the same answer: "Objection: too overbroad and vague." 2-ER-236.

During this time, Mr. Oliver also was uncooperative in the United States Trustee's efforts to schedule his deposition. When the United States Trustee reached out to attempt to set a date and time during business hours, Mr. Oliver "responded that he would be available on three dates from 7:00 pm – 10:00 pm." 2-ER-221. But Mr. Oliver did not explain why he wished to start a deposition at 7 p.m., beyond stating that "he intended to object to the UST's request to conduct the deposition during business hours because it was 'his right.'" *Id.*

As a result of Mr. Oliver again providing inadequate responses to discovery requests by the court-ordered deadlines, the United States Trustee filed a second motion to compel on December 14, 2020, again after first trying to resolve the issues with Mr. Oliver and filing the required certification under Federal Rule of Civil Procedure 26(c). 2-ER-219. The motion to compel sought "complete answers to interrogatories, responses to request for production," and for Mr. Oliver "to appear for [his] deposition on a date certain at a time no later than 11:00 am." 2-ER-222. Along with her motion to compel, the United States Trustee provided the court with the email communications that covered her efforts to resolve the discovery issues. 2-ER-239-47. The United States Trustee also requested fees and costs associated with bringing the motion. 2-ER-225.

Mr. Oliver did not file a response, and the court issued its tentative ruling granting the motion. 2-ER-195. At the hearing on the motion, Mr. Oliver began by stating: "Just let me say that nearly everything the Department of Injustice is submitting

is lies. I've filed several complaints with them already, with different entities, for the violations of rules and criminal acts, and that's what they don't like. They've repeatedly lied to me. It's an incessant stream." 2-ER-185. Mr. Oliver then went on to list what he felt were "lies," and argued that he felt he had a right to court-appointed counsel. 2-ER-185-88. The purported lies included that his "deposition must be held during the times [counsel for the United States Trustee] state[s]" and that his discovery responses "consisted of mainly meritless and unfounded objections." 2-ER-185-86.

The court again reminded Mr. Oliver that it was unable to consider arguments and case law put forth by Mr. Oliver at the hearing, with neither the court nor the United States Trustee having the benefit of reviewing the assertions ahead of time. 2-ER-188. The court told Mr. Oliver the problem was "self-inflicted" because of his failure to put his arguments in writing. *Id.* The court further questioned why Mr. Oliver continued this pattern, despite the court's previous admonishments: "I don't understand why you are consistently refusing to file a response if you have a response and the[n] waiting to come to the hearing and air your complaint and cite a bunch of cases that no one has even laid eyes on." 2-ER-189-90.

Addressing Mr. Oliver's demand that his deposition start at 7 p.m., the court ruled that the United States Trustee "is not obliged to work outside of normal business hours. And absent some kind of extraordinary showing on your behalf as to why you need a nighttime deposition, I'm not going to require her to do that." 2-ER-190.

The court also addressed Mr. Oliver's request for appointed counsel. 2-ER-191. The court explained it "had no authority" to appoint counsel for him in a civil bankruptcy matter because the United States Trustee "is not prosecuting you" but rather "trying to get discovery on the issue of whether or not you . . . made false representations to the court in your schedules," which is "a different thing" than "actually being prosecuted by the United States Attorney." *Id.* But the court encouraged Mr. Oliver to find a lawyer through Legal Aid or another agency that might be able to assist him free of charge. 2-ER-192-93. Mr. Oliver replied that "[n]obody's going to take the case because there's too much corruption in it. I've looked everywhere. Nobody is taking the case because there's too much corruption." 2-ER-193.

The court then affirmed its tentative ruling and granted the motion to compel. 2-ER-193-94; 2-ER-195. And after the United States Trustee's counsel submitted a declaration and supporting documentation, 2-ER-173, the court awarded the United States Trustee $3,582.55 in attorney's fees and costs associated with bringing the motion. 2-ER-171-72. Finally, the court also ordered Mr. Oliver to (1) provide, within 10 days, "full and complete Answers to Interrogatories, Responses to Request for Production of Documents and all responsive documents" and (2) to "appear for deposition on February 12, 2021, at 9:00 a.m." 2-ER-172.

4. Mr. Oliver Fails to Appear for Two Court-Ordered Depositions

Despite the court's order, Mr. Oliver did not appear for his February 12, deposition, did not communicate with the United States Trustee or otherwise explain his failure to appear, and did not provide the ordered discovery. 2-ER-102-103. As a result, the United States Trustee filed a motion to extend the discovery cutoff date. 2-ER-158. Mr. Oliver responded to the extension motion stating that "there is no way in hell" he would "attend any deposition whatsoever without an attorney/witness present in his defense." 2-ER-152. He also expressed that "[f]or personal health concerns and overall safety precautions," associated with the pandemic "[he] will only attend remotely." *Id.*

At the hearing on the extension motion, Mr. Oliver restated his concern that the deposition should not be taken in person. 2-ER-128-29. The United States Trustee explained that Mr. Oliver's deposition was always set up to be a virtual deposition where "Mr. Oliver was to have a conference room for his sole use at the court reporter's office" and that counsel "would be questioning him by remote means." 2-ER-131. She explained that "the first that [she] heard that [Mr. Oliver] had a potential issue with the conference room at the court reporter's office was in" his response to the extension motion but that he had not raised these concerns "via a meet and confer process." *Id.*

Ultimately, the court proceeded to reset Mr. Oliver's deposition. The court told Mr. Oliver it would "order that the deposition be held virtually," "that you have your own personal room at the court reporter's office," and "the deposition goes forward

. . . at a reasonable hour, preferably 10:00 a.m." and asked if he "could live with" that procedure. 2-ER-133. Mr. Oliver responded that he still had concerns that he needed a witness to attend the deposition with him to prevent any "doctoring of court records." 2-ER-132. The court explained the precautions and safeguards designed to ensure the accuracy and reliability of deposition transcripts, but nevertheless asked the United States Trustee whether she had "any opposition to [Mr. Oliver] having a witness in the personal room of the court reporter while the deposition is underway." 2-ER-136. The United States Trustee agreed so long as the "witness [was] willing to just observe" and did not participate in the deposition. 2-ER-136-37.

The parties agreed that they were available for the deposition on April 19, 2021, at 10:00 a.m., although Mr. Oliver wanted to confirm that he could find a witness that would be available then. 2-ER-137-38. The court asked that Mr. Oliver inform the United States Trustee by the next day if there was a problem finding someone to witness the deposition as scheduled. 2-ER-138. Again, the court reiterated that the deposition would be "at the court reporter" on April 19, 2021. 2-ER-140. Finally, the court asked, "Mr. Oliver, we're clear, are we now, what your obligations are versus [the United States Trustee's] obligations" and Mr. Oliver responded, "I believe so." *Id.*

The court issued a minute order that same day providing, that "[t]he deposition to be held virtual in the Court Reporter office on 4/19/21 at 10:00 a.m. Mr. Oliver has the court's permission to have a witness/friend with him at the deposition." 2-ER-123. The order also required "Mr. Oliver to let [the United States Trustee] know by

tomorrow if his witness/friend is available for 4/19/21." *Id.* And the order requested a "status report to be filed by 4/22/21 informing the court if the deposition has been completed." *Id.* Finally, the order continued the hearing "to 4/29/21," *id.*, so the parties could give the court "the good news that the deposition is complete." 2-ER-140.

Mr. Oliver again did not appear for his deposition as scheduled, and the United States Trustee filed the required status report informing the court on April 22, 2021. 2-ER-120-21. Mr. Oliver responded that the morning of the scheduled deposition he emailed the United States Trustee, "in order to not inconvenience my friend, i'm am [sic] preparing to conduct the deposition remotely where i live." 2-ER-119. He said that email also requested video conference instructions so that he could be deposed from home, and that he would be available to begin up until noon that day. *Id.* The email string shows that Mr. Oliver sent the email informing the United States Trustee that he wanted to be deposed from his house roughly 30 minutes before the deposition was scheduled to start. 2-ER-184. The string also includes the United States Trustee's response telling Mr. Oliver that he needed to appear at the court reporter's office as ordered by the court. 2-ER-183. The United States Trustee also informed Mr. Oliver: "If you do not appear at the court reporter's office at 10 am today for your deposition, you will be in violation of at least two court orders, and I will seek additional sanctions against you." *Id.* Mr. Oliver responded: "I just don't trust you criminals." *Id.*

D. The Bankruptcy Court Orders Terminating Sanctions Under Rule 37

Ultimately, when Mr. Oliver did not pay the sanctions, did not appear at either of his court-ordered depositions, and did not appear at the April 29, 2022 status conference, which was set by the court to confirm that the deposition was complete, the United States Trustee filed her motion under Rule 37(b)(2) and 37(d)(1) asking the court to strike Mr. Oliver's answer and enter a default against him. 2-ER-95. The motion detailed Mr. Oliver's multiple failures to comply with discovery, Mr. Oliver's discovery tactics, and his violations of court orders requiring his compliance (as set forth in Section C, *supra*). 2-ER-100-105. The United States Trustee noted Mr. Oliver's "deposition and full and complete responses to the Interrogatories and Requests for Production of Documents remain outstanding" and that Mr. Oliver had failed to appear at the most recent pre-trial conference. 2-ER-104.

A terminating sanction was thus appropriate, the United States Trustee alleged, because "discovery abuses and lack of cooperation have frustrated the [United States Trustee's] reasonable discovery efforts and ability to prepare for trial" and Mr. Oliver "is no longer participating in the pre-trial process and is not actively defending the case and moving the case towards trial." *Id.* Because Mr. Oliver had repeatedly violated discovery orders, the United States Trustee argued, "[f]urther Court orders aimed at compliance would not appear worthwhile." *Id.*

Mr. Oliver filed an objection, primarily attacking the Justice Department trial attorney who filed the complaint, referring to her only as "Criminal" and repeatedly calling her a "liar" who "does not belong practicing law but does belong in prison." 2-ER-86-87. He also identified a website he had created to share his complaints against the United States Trustee's counsel.[13] 2-ER-86-87. In his objection, Mr. Oliver denied the allegations in the motion and asserted that "*any delays in this case or any failure for Criminal to obtain the information she seeks is 100 percent her own fault.*" 2-ER-92 (emphasis in original). Mr. Oliver also articulated his displeasure with the bankruptcy court, noting, for example, that "this court seriously wants Petitioner to go to trial with this compulsive liar and an overtly biased judge and expect an equitable outcome?! Petitioner might as well sit in 'the chair' now so that you criminals can throw the switch like you want to do." 2-ER-93. Mr. Oliver also expressed dissatisfaction with the legal system as a whole, stating, for example, that "[w]hat Petitioner finds truly contemptible is *the entire U.S. legal system!* The cesspool, the good ol' boy network, the disgusting and rampant cancer, the world's largest crime syndicate, or whatever other appropriate term one would choose to call it, operates mostly unchecked and unrestrained here in Amerika [sic]." 2-ER-87 (emphasis in original).

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[13] The bankruptcy court later addressed this conduct: "[T]he Court admonishes [Mr.] Oliver to comply with the Code of Professional Conduct in USDC Local Rule 2.1. Hereinafter, he is not permitted to refer to [counsel] as a 'Criminal' in his pleadings or within the presence of this Court; and his accusations against [counsel] on the website link referenced in his Objection are also uncivil and inappropriate." 1-ER-35.

Mr. Oliver concluded by explaining that "[h]e is sick and tired of this court treating his chapter 7 like it's an assembly line and not addressing whatsoever the mountain of misconduct by Criminal while ignoring everything he submits! He has filed several complaints, made innumerable phone calls, and much more. Yet the stench of corruption is still overwhelming." 2-ER-94. He thus asked the court to deny the motion and award him costs. *Id.*

The United States Trustee filed a reply, briefly addressing what she found to be Mr. Oliver's "extraneous and irrelevant arguments," 2-ER-72, and asking the court to admonish Mr. Oliver regarding his conduct. 2-ER-79.

Prior to the hearing, the bankruptcy court issued its tentative ruling, granting terminating sanctions, and denying the request for attorney's fees. 1-ER-30-35. The ruling detailed Mr. Oliver's failures to comply with discovery, as well as his failures to comply with court orders. Specifically, the court found that, "the Court has already ruled that Oliver refused to participate in the early meeting of counsel and complete/sign the Certificate of Compliance as directed by the Local Rules; he failed to attend his deposition twice; he failed to answer interrogatories; and his responses to inspection demand consisted of objections and production of only one responsive document." 1-ER-32-33. As a result, "the Court has issued three orders . . . all of which Oliver violated" and Mr. Oliver "has not explained why he violated these orders and/or his explanation was inadequate." *Id.*

The court concluded that "[t]he record in this case supports imposing a terminating sanction against Oliver, including striking his answer and entering the default, and proceeding to a default judgment prove up by declaration and, if necessary, a hearing." 1-ER-32-33. The court applied the four most common Rule 37(b)(2) factors and found that they weighed in favor of granting the motion, 1-ER-34, in particular finding that less drastic sanctions would not suffice and would, in fact, be "utterly useless." 1-ER-34.

In addition, the tentative ruling denied the United States Trustee's request for attorney's fees incurred for defending Mr. Oliver's motion to compel, accepting Mr. Oliver's "claim of inability to pay" and determining that "additional monetary sanctions are pointless . . . ." 1-ER-35.

Lastly, the tentative ruling admonished Mr. Oliver regarding his conduct and ordered that "he is not permitted to refer to [the United States Trustee's counsel] as a 'Criminal' in his pleadings or within the presence of this Court; and his accusations against [counsel] on the website link referenced in his Objection are also uncivil and inappropriate." *Id.*

On June 24, 2021, the court held its hearing on the United States Trustee's request for terminating sanctions. Mr. Oliver began by again calling counsel for the United States Trustee "criminal." 2-ER-62. The court admonished Mr. Oliver to continue with his argument "but be civil about it." 2-ER-63. Mr. Oliver responded, "Do you have another word for someone who commits crimes? I thought they were

called criminals." *Id.* Mr. Oliver responded that the court "might be part of this whole conspiracy. I can't – I can't be certain. I've been fighting this crime syndicate, you criminals, for 20 years, and I knew you were going to extend it for another 20." *Id.*

Mr. Oliver then took issue with the depositions for which he had failed to appear, 2-ER-63-64, and proceeded to tell the court: "So I'm going to speak in a language that you can understand. This is what I'm going to do if you rule as in your tentative ruling. I'm going to file complaints, both in and out of court . . . ." 2-ER-65. Mr. Oliver then stated other actions he intended to take in response to the court's ruling, 2-ER-65-66, and concluded by saying that "[s]o there are two kinds of pain in this world; pain that hurts, and pain that alters. I experienced the pain that alters. So I'm going to be very glad to see the day when you're all dragged off in handcuffs to prison where you belong." 2-ER-66. When cautioned against threatening the judge or counsel for the United States Trustee, Mr. Oliver responded, "I don't threaten anybody. I only make [a] promise. This is a promise. This is not a threat." *Id.*

Counsel for the United States Trustee then advised the court that the request for attorney's fees was being withdrawn, 2-ER-67-68, and rested on the pleadings. 2-ER-68. The court accepted the United States Trustee's withdrawal of the fee request and otherwise affirmed its tentative ruling. 2-ER-69-70. Finally, the court asked counsel for the United States Trustee to "prepare and lodge an order in accordance with the tentative [ruling]." 2-ER-70. That order was entered on July 12, 2021, 1-ER-29,

although Mr. Oliver filed a notice of appeal of the order entering the default before the order was entered. 2-ER-57.

E. The Bankruptcy Court Enters the Default Judgment

After the default was entered, the United States Trustee filed an application for a default judgment. 2-ER-40. She argued a default judgment was appropriate for several reasons, including:

- Mr. Oliver filed bankruptcy to avoid satisfying a judgment, 2-ER-45;
- Mr. Oliver transferred the real estate to his mother shortly before filing and failed to disclose the transfer, 2-ER-45-46
- Mr. Oliver did not disclose his financial interest in a book he co-authored, 2-ER-48; and
- Mr. Oliver's answer had been struck and a default entered against him, 2-ER-49.

The United States Trustee further argued that relief was warranted under sections 727(a)(4) and (a)(2), setting forth the elements of each count and the supporting facts that showed the United States Trustee had met her burden on each. 2-ER-50-55.

The court entered the default judgment on August 4, 2021. 1-ER-25-26; 1-ER-27. Two days later, Mr. Oliver filed a one-paragraph objection to the application, arguing that "the pile of bullsh!t/lies just submitted by the Department of Injustice/Plaintiff" violated Federal Rules of Bankruptcy Procedure 9010(b) and 7012. 2-ER-39. Mr. Oliver concluded his objection with: "I hope you all rot in hell where you belong and that Satan calls you home early." *Id.*

Mr. Oliver then appealed the default judgment. 2-ER-37. In addition, earlier in the case, Mr. Oliver had also appealed an order denying his recusal motion. That appeal,

in which the United States Trustee did not participate, was dismissed as interlocutory. *See In re Oliver*, No. 21-60034 (9th Cir.) (ECF 8); *In re Oliver*, No. 21-1059 (B.A.P. 9th Cir.) (ECF 11). However, in his brief to the bankruptcy appellate panel, Mr. Oliver argued the recusal issue, but the United States Trustee's brief did not because she had not addressed the matter below. The United States Trustee likewise does not address it here.

F. The Bankruptcy Appellate Panel Affirms

On appeal, the Bankruptcy Appellate Panel for the Ninth Circuit affirmed the bankruptcy court's rulings. 1-ER-4-24. The panel held that the bankruptcy court did not abuse its discretion when it entered terminating sanctions against Mr. Oliver. 1-ER-5. The court found that the record supported "the bankruptcy court's findings that [Mr. Oliver] willfully and in bad faith failed to comply with the court's discovery orders." 1-ER-23. And it recognized that "[w]hen as here a pro se litigant's conduct demonstrates a continuing unwillingness to cooperate with legitimate discovery requests and comply with orders compelling discovery, even after the court has given the litigant leeway, additional time to comply, and has utilized lesser alternative sanctions to no effect, the court has discretion to consider and enter terminating sanctions." 1-ER-24.

Regarding recusal, Mr. Oliver argued recusal was necessary because the bankruptcy court "ignored the UST's purported fraud and lies and permitted them to go unpunished while criticizing his litigation conduct." 1-ER-19. The panel rejected

his arguments because "nothing in Oliver's appeal briefs persuaded [the panel] that the bankruptcy judge was obliged to recuse herself." 1-ER-21. The panel noted that "[t]he record did not support the conclusions debtor attempts to draw" and that "[i]mproper inferences, unwarranted speculation, inuendo, and hyperbole are not sufficient to justify recusal." 1-ER-19-20. Rather, the panel found, the bankruptcy judge "had a continuing duty to consider and resolve the objection and discharge action."

Mr. Oliver timely filed a notice of appeal to this Court. 3-ER-441.

SUMMARY OF THE ARGUMENT

The record amply supports the bankruptcy court's decisions to enter terminating sanctions against Mr. Oliver and to deny his discharge. Mr. Oliver had frustrated the discovery process for nearly a year, and lesser sanctions had not led Mr. Oliver to comply with the Bankruptcy Rules, the bankruptcy court's local rules, and the bankruptcy court's orders. The United States Trustee filed two motions to compel discovery, but Mr. Oliver did not comply with the orders granting those motions, nor did he pay the sanctions he was ordered to pay. Only when all other avenues had been exhausted and it was clear Mr. Oliver was not going to fulfill his discovery obligations did the United States Trustee move for terminating sanctions under Rule 37. The bankruptcy court gave Mr. Oliver a full and fair opportunity to respond. Based upon the record before it, the court below did not abuse its discretion in granting that motion and entering an order striking Mr. Oliver's answer and entering a default.

Nor did the bankruptcy court abuse its discretion in granting the United States Trustee's motion for a default judgment and denying Mr. Oliver discharge under 11 U.S.C. § 727(a)(2) and (a)(4). It was undisputed that Mr. Oliver had transferred the Rhode Island property to his mother for no consideration and that he failed to disclose that transfer in his sworn bankruptcy schedules. It was also undisputed that Mr. Oliver had co-authored a book and that he had failed to disclose his interest in that book. His answer to the United States Trustee's complaint did not address these allegations, but in any event it had been properly stricken by the bankruptcy court as a sanction for his abuse of the discovery process. The United States Trustee's complaint set forth the elements of each count with supporting facts, and a default had been entered against Mr. Oliver. Thus, the bankruptcy court did not abuse its discretion in denying Mr. Oliver's discharge.

STANDARD OF REVIEW

The bankruptcy court's factual determinations are reviewed for clear error, while mixed questions of fact and law are reviewed de novo. *In re Retz*, 606 F.3d 1189, 1196 (9th Cir. 2010).

A court's imposition of terminating sanctions is reviewed for abuse of discretion and this court "will not reverse absent a definite and firm conviction that the [lower] court made a clear error of judgment." *United States v. National Medical Enters, Inc.*, 792 F.2d 906, 910 (9th Cir. 1986). The question is not whether the appellate court "would have, as an original matter, imposed the sanctions chosen by the trial court, but whether

the trial court exceeded the limits of its discretion." *Halaco Eng'g Co. v. Costle*, 843 F.2d 376, 379 (9th Cir. 1988) (citing *National Hockey League v. Metropolitan Hockey Club, Inc.*, 427 U.S. 639, 642 (1976) (per curiam)).

A court's decision to enter a default and a default judgment is reviewed for abuse of discretion. *Speiser, Krause & Madole P.C. v. Ortiz*, 271 F.3d 884, 886 (9th Cir. 2001). Under an abuse of discretion standard, the reviewing court must affirm unless the trial court "applied the wrong legal standard or its findings were illogical, implausible or without support from evidence in the record." *TrafficSchool.com v. Edriver Inc.*, 653 F.3d 820, 832 (9th Cir. 2011).

"In an action for denial of discharge, a finding that the debtor acted with an intent to hinder, delay, or defraud creditors is reviewed for clear error." *Hansen v. Moore (In re Hansen)*, 368 B.R. 868, 874 (B.A.P. 9th Cir. 2007). This Court "may affirm on any ground supported by the record, regardless of whether the bankruptcy court relied upon, rejected or even considered that ground." *Fresno Motors, LLC v. Mercedes–Benz USA, LLC*, 771 F.3d 1119, 1125 (9th Cir. 2014); *Arnot v. Endresen (In re Endresen)*, 548 B.R. 258, 268 (B.A.P. 9th Cir. 2016).

ARGUMENT

I. THE BANKRUPTCY COURT DID NOT ABUSE ITS DISCRETION IN GRANTING THE MOTION FOR SANCTIONS AND ENTERING A DEFAULT AGAINST MR. OLIVER

Civil Procedure Rule 37, which is incorporated into adversary proceedings under Federal Rule of Bankruptcy Procedure 7037, addresses a party's failure to make

disclosures or cooperate in discovery. It governs motions to compel discovery, failures to comply with court orders, failures to attend its own deposition, and sanctions imposed for not obeying discovery orders. *See* Fed. R. Civ. P. 37. Thus, a "bankruptcy court, faced with an obstreperous alleged bankrupt, unequivocally ha[s] the power to apply Fed. R. Civ. P. 37 sanctions for obstruction of discovery." *Matter of Visioneering Const.*, 661 F.2d 119, 123 (9th Cir. 1981). In such a case, sanctions are appropriate when a bankruptcy court concludes a debtor has "deliberately and obstinately refused to cooperate with discovery requests and court orders" and the sanctions "should not be reversed unless there has been an abuse of discretion." *Id.* Sanctions specifically provided for in Rule 37 include "striking pleadings in whole or in part" and "rendering a default judgment against this disobedient party . . . ." Rule 37(b)(2)(A)(iii) and (v), respectively.

Before entering case-dispositive sanctions under Rule 37, a court must consider the following factors: (1) the public interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the party seeking the sanctions; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions. *See Sanchez v. Rodriguez*, 298 F.R.D. 460, 464 (C.D. Cal. 2014); *see also In re Jakubaitis*, No. 8:13-BK-10223-TA, 2021 WL 1293856, at *6 (B.A.P. 9th Cir. Apr. 7, 2021) (applying the Ninth Circuit's five-part test in a bankruptcy case).

Here the bankruptcy court did not abuse its discretion finding these factors justified terminating sanctions. 1-ER-34. Regarding the first factor, Mr. Oliver's discovery conduct was far from "expeditious," but rather the cause of the delays in moving the case toward a resolution. As the bankruptcy court found, "[t]he public interest is served by bringing this case to a conclusion because it has been pending for almost one year, and despite the many court hearings and the Sanctions and Compel Orders, this action is not progressing toward trial due to Oliver's willful refusal to participate . . . ." *Id.*

The second factor likewise weighed in favor of terminating sanctions because Mr. Oliver's refusal to cooperate in discovery frustrated the bankruptcy court's ability to manage its docket as it required the court to "conduct[] multiple hearings dealing with Oliver's noncompliance," which "consumed the [bankruptcy] [c]ourt's time without achieving any progress toward trial." *Id.*

On the third factor, the prejudice to the United States Trustee was significant because, "[d]espite almost a year of effort and the two Sanctions and three Compel Orders, the U.S. Trustee has not been able to depose Oliver or obtain other documents or information to explore her allegations in the complaint." *Id.*

Regarding the fourth factor, the court found that although "public policy favors disposition of cases on merits, this factor alone does not assist Oliver because he has refused to allow the case to be heard on the merits." *Id.*

Finally, regarding the fifth factor, "no less[er] sanction[] would suffice in this case" because, lesser sanctions had already been ordered to no avail. *See, e.g., In re Jakubaitis*, No. 8:13-BK-10223-TA, 2021 WL 1293856, at *7 (B.A.P. 9th Cir. Apr. 7, 2021) (affirming stronger sanctions where lesser sanctions had been ineffective in achieving discovery compliance). Specifically, the bankruptcy court had "already issued . . . monetary sanctions which [Mr. Oliver] claims he cannot afford to pay," and orders to compel discovery "which Oliver has violated and continues to defy." *Id.* As the bankruptcy court concluded, its "prior orders had no effect," and even after those orders Mr. Oliver "did not even bother to appear at the hearings on 4/29/2021." *Id.*

In sum, the record before the bankruptcy court fully supports its decision to strike Mr. Oliver's short, nonresponsive answer and to enter a default. Mr. Oliver's repeated non-compliance with basic discovery requirements and court orders is fully set forth in detail in Section II.C, *supra*. Mr. Oliver had frustrated the discovery process for nearly a year by among other things, providing non-responsive answers and baseless objections to interrogatories and failing to remedy these deficiencies when ordered by the court to do so; initially not cooperating in scheduling his deposition but instead insisting he would only be available from 7-10 p.m. and when compelled by court order to attend his deposition, failing to do so, twice; and refusing to pay court-ordered sanctions. 1-ER-31-32.

Mr. Oliver's attempt to refute the underlying facts regarding his discovery misconduct are unavailing.[14] Mr. Oliver argues that he did not know he had to appear for his deposition. He states that he "read the second court order multiple times. It makes no mention of me—or Appellee for that matter—being physically there." App. Brief at 21. Yet, as the bankruptcy appellate panel recognized "the court's April 1, 2021 discovery order was the product of considered attempts to address Oliver's stated reasons for not complying with the prior order specifically requiring his attendance at the previously scheduled deposition." 1-ER-23; *see* Section II.C.4 *supra*. Further, he simultaneously acknowledges that he refused to appear, not because he misunderstood the court's order, but because he purportedly "had a legitimate reason to believe it was a set-up and was in fear for [his] life to attend in person." App. Brief at 21. In other words, "he unilaterally . . . substituted his own judgment and reasoning in place of the court's order" and "attempted to change the requirements the court imposed for his deposition" without seeking "relief from or clarification of the April 1, 2021 order before doing so." 1-ER-23.

Regarding the other discovery violations found by the court below, Mr. Oliver alleges that he "responded to legitimate requests," App. Brief at 22, but, again, that was

[14] Much of Mr. Oliver's brief addresses his belief that the bankruptcy court was biased and should have granted his recusal motion. App. Brief at 13-20. To the extent this Court chooses to consider it, the United States Trustee did not participate in that issue below and thus does not do so here.

not for him to determine. Rather, his objections were overruled, and the bankruptcy court issued orders granting the United States Trustee's motion to compel him to answer interrogatories and produce documents. 2-ER-171-72; 2-ER-182. Further, the United States Trustee had to file a motion to compel in an unsuccessful attempt to obtain the most basic discovery from Mr. Oliver — his initial disclosures under Federal Rule of Bankruptcy Procedure 7026. 2-ER-207-08.

Nor did the court below abuse its discretion by concluding lesser sanctions would not secure Mr. Oliver's cooperation in discovery or in creating any respect for the Bankruptcy Rules, the bankruptcy court's local rules or its orders. And Mr. Oliver concedes he did not pay the monetary sanctions he was ordered to pay for his discovery non-compliance. App. Brief at 22 ("I am not going to *pay* someone to commit crimes against me no matter what other criminal comes down from Mount Olympus and says that I must" (emphasis in original)). Mr. Oliver's non-compliance continued unabated, and the court thus did not abuse its discretion in entering a default against Mr. Oliver. *See In re Pryor*, No. ADV 09-2322-BR, 2011 WL 4485796, at *5 (B.A.P. 9th Cir. Aug. 12, 2011), *aff'd*, 543 F. App'x 685 (9th Cir. 2013) (noting that "[t]he Ninth Circuit has long recognized a bankruptcy court's authority under Civil Rule 37(b) to strike a debtor's answer and enter default").

II. THE BANKRUPTCY COURT DID NOT ABUSE ITS DISCRETION IN GRANTING THE DEFAULT JUDGMENT APPLICATION AND DENYING MR. OLIVER'S DISCHARGE

"[A]fter entry of default . . ., the Bankruptcy Court was entitled in its discretion to enter a default judgment." *In re Pryor*, No. CV 17-2427 DSF, 2018 WL 3435402, at *4 (C.D. Cal. July 13, 2018). As with an entry of default, a court's decision "to enter default judgment[] is reviewed for abuse of discretion." *In re Pryor*, No. ADV 09-2322-BR, 2011 WL 4485796, at *4 (B.A.P. 9th Cir. Aug. 12, 2011), *aff'd,* 543 F. App'x 685 (9th Cir. 2013). Federal Rule of Civil Procedure 55(b)(2) specifically provides that a party may apply to the court for a default judgment "when a party against whom a judgment of affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise." Fed. R. Civ. P. 55 (incorporated by reference into Federal Rule of Bankruptcy Procedure 7055).

This rule gives the court "considerable leeway as to what it may require as a prerequisite to the entry of a default judgment." *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). But, "[t]he general rule is that upon default the factual allegations of the complaint, except those relating to the amount of damages, will be taken as true." *Id.* In addition, "[u]pon entry of a default judgment, facts alleged to establish liability are binding upon the defaulting party, and those matters may not be relitigated on appeal." *Danning v. Lavine*, 572 F.2d 1386, 1388 (9th Cir. 1978). Thus, a defendant in default cannot challenge the sufficiency of the evidence as a basis for

reversal; he may only contest the sufficiency of the pleadings. *Wooten v. McDonald Transit Assocs., Inc.*, 788 F.3d 490, 496 (5th Cir. 2015).

Here, the United States Trustee's application for a default judgment set forth, in detail, all the requisite elements under section 727(a)(2) and (a)(4), and the relevant facts were never in dispute.[15]

A. The Bankruptcy Court Did Not Abuse Its Discretion In Denying Mr. Oliver's Discharge Under Section 727(a)(4)

A bankruptcy court may deny the debtor's discharge if the debtor knowingly and fraudulently makes a false oath in or in connection with the bankruptcy case. *See* 11 U.S.C. § 727(a)(4)(A). Specifically, to prevail on a section 727(a)(4)(A) claim, the plaintiff "must show by a preponderance of the evidence that: (1) Debtor made such a false statement or omission, (2) regarding a material fact, and (3) did so knowingly and fraudulently." *In re Khalil*, 379 B.R. 163, 172 (B.A.P. 9th Cir. 2007), *aff'd,* 578 F.3d 1167 (9th Cir. 2009). In addition, "[a] disclosure's materiality is not determined by whether

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[15] A hearing was unnecessary because Mr. Oliver's non-responsive answer had been stricken. 1-ER-29. In addition, Rule 55 "itself authorizes the bankruptcy court to conduct such hearings 'as it deems necessary and proper.'" *In re Beltran*, 182 B.R. 820, 823 (B.A.P. 9th Cir. 1995). Specifically, Rule 55(b)(2) says that "[t]he court may conduct hearings . . . when, to enter or effectuate judgment, it needs to: (A) conduct an accounting; (B) determine the amount of damages; (C) establish the truth of any allegation by evidence; or (D) investigate any other matter." The "language of the rule itself confirms the discretion of the trial court to hold such hearings 'as it deems necessary and proper,'" *In re Villegas*, 132 B.R. 742, 746 (B.A.P. 9th Cir. 1991), and here no such hearings were necessary for any of these reasons. *See also* 11 U.S.C. § 102(a)(1) ("'after notice and a hearing' or a similar phrase [] means . . . such opportunity for a hearing as is appropriate in the particular circumstances . . . ."; Federal Rule of Bankruptcy Procedure 9001 (incorporating section 102(a)(1) into the Rules).

it may financially prejudice the estate or creditors." *In re Hoblitzell*, 223 B.R. 211, 215 (Bankr. E.D. Cal. 1998). "A false statement or an omission in the debtor's bankruptcy schedules or statement of financial affairs can constitute a false oath." *Id.*, *see also Robinson v. Worley*, 849 F.3d 577, 584, 587 (4th Cir. 2017) (debtor's sworn representation as to asset's value in schedules "counts" as an "oath" under § 727(a)(4) and denying discharge where debtor undervalued minority interest in land trust). Fraudulent intent "usually must be proven by circumstantial evidence or inferences drawn from the debtor's course of conduct." *Id.* at 174.

The United States Trustee's complaint (as well as her application for a default judgment) set forth in detail all the required elements for the court to deny Mr. Oliver's discharge under section 727(a)(4). 2-ER-40; 3-ER-317. As to the first element, the United States Trustee noted that it was undisputed that Mr. Oliver improperly failed to disclose the transfer of the Rhode Island property. 2-ER-52. Rather, in both his original and his amended Statement of Financial Affairs, Mr. Oliver responded "no" to the question regarding whether he had transferred any property within two years before his bankruptcy filing. *Id.*; 3-ER-381. This was false, because Mr. Oliver had recorded the quitclaim deed transferring the property to his mother within ten days of his bankruptcy filing. 3-ER-324. It was also undisputed that Mr. Oliver failed to disclose his interest in the book he co-authored. 3-ER-326-27; 3-ER-395-98.

Both of these omissions and false statements were material because they related to Mr. Oliver's financial affairs. *See In re Hoblitzell*, 223 B.R. at 215-16 (finding that "[a]

disclosure's materiality is not determined by whether it may financially prejudice the estate or creditors. An omitted asset may ultimately be found to have no value, but its disclosure is necessary 'if it aids in understanding the debtor's financial affairs and transactions'" (internal cite omitted).

It was also apparent that the omissions and false statements were knowing because Mr. Oliver himself indicated he filed bankruptcy to avoid paying a creditor with a judgment against the Rhode Island property. 3-ER-360. Indeed, Mr. Oliver affirms as much and continues to criticize that judgment in his brief to this Court. *See* App. Brief at 2-3. And he certainly knew of the book he co-authored, so these omissions were intentional, and the bankruptcy court did not abuse its discretion in denying Mr. Oliver's discharge under section 727(a)(4).

B. Alternatively, the Bankruptcy Court Properly Denied Mr. Oliver's Discharge Under Section 727(a)(2)

Although one ground is sufficient to deny Mr. Oliver's discharge, the bankruptcy court correctly concluded that his discharge also could be denied under section 727(a)(2)(B). Section 727(a)(2) provides for denial of discharge if the "debtor, with intent to hinder, delay, or defraud… has transferred, removed, destroyed, mutilated, or concealed . . . property of the debtor, within one year before the date of the filing of the petition; or . . . after the date of the filing of the petition." 11 U.S.C. § 727(a)(2). "A party seeking denial of discharge under § 727(a)(2) must prove two things: (1) a disposition of property, such as transfer or concealment, and (2) a subjective intent on

the debtor's part to hinder, delay or defraud a creditor through the act of disposing [or concealing] of the property." *In re Retz*, 606 F.3d at 1200. A plaintiff can demonstrate the intent element of section 727(a)(2) with circumstantial evidence or inferences drawn from the debtor's conduct. *Id.* at 1199.

The United States Trustee's application for a default judgment alleged (1) that Mr. Oliver concealed the transfer of the Rhode Island property and his interest in the book he co-authored, and (2) that he did so with the intent to hinder and delay a creditor. 2-ER-55. These allegations were sufficient to state a claim under section 727(a)(2)(B).

The record also amply supported the bankruptcy court's denial of Mr. Oliver's discharge under section 727(a)(2)(B). As the United States Trustee explained in her default judgment application, Mr. Oliver "testified he transferred the Rhode Island Property to his mother to frustrate [the Rhode Island judgment creditor]'s attempt to enforce the Judgment and that the very act of seeking bankruptcy relief was intended to impede his only scheduled creditor . . . ." *Id.*; *see also* App. Brief at 4 ("I learned of the judgment in early 2020 and filed a chapter 7 bankruptcy on February 28, 2020, to prevent the imminent sale of the Rhode Island property").

Both the pre-filing property transfer and Mr. Oliver's own testimony evidence Mr. Oliver's intent to hinder, delay and defraud his creditors, and the bankruptcy court did not abuse its discretion in finding that the United States Trustee met her burden to deny Mr. Oliver's discharge under section 727(a)(2)(B).

CONCLUSION

For these reasons, the United States Trustee respectfully asks this Court to affirm the orders entered below.

Dated: November 2, 2022

Respectfully Submitted,

TIFFANY L. CARROLL
ACTING UNITED STATES TRUSTEE

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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