



Honorable Mike K. Nakagawa  
United States Bankruptcy Judge



Entered on Docket  
March 26, 2020

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

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<p>In re:</p> <p>JOSE SANCHEZ,</p> <p style="text-align: center;">Debtor.</p>	<p>) Case No.: 19-14239-MKN</p> <p>) Chapter 11</p> <p>)</p> <p>) Date: March 18, 2020</p> <p>) Time: 9:30 a.m.</p> <p>)</p>
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**ORDER ON MOTION TO COMPEL COMPLIANCE WITH SUBPOENA<sup>1</sup>**

On March 18, 2020, the court heard the Motion to Compel Compliance with Subpoena (“Motion”). The appearances of counsel were noted on the record. After arguments were presented, the matter was taken under submission.

**BACKGROUND**

On July 2, 2019, a voluntary Chapter 11 petition was filed by Jose Sanchez (“Debtor”). (ECF No. 1). On November 6, 2019, three separate proofs of claim were filed on behalf of Diana Mullen (“Mullen”), in her capacity as court-appointed receiver in case #A-17-1760927-B,<sup>2</sup> as well as her counsel in that proceeding, Brian K. Berman (collectively “Mullen POCs”).<sup>3</sup>

<sup>1</sup> In this Order, all references to “ECF No.” are to the numbers assigned to the documents filed in the case as they appear on the docket maintained by the clerk of the court. All references to “Section” are to provisions of the Bankruptcy Code, 11 U.S.C. § 101, *et seq.* All references to “Bankruptcy Rule” are to the provision of the Federal Rules of Bankruptcy Procedure. All references to “Civil Rule” are to the Federal Rules of Civil Procedure.

<sup>2</sup> Case number A-17-1760927-B appears to be a matter pending in the Eighth Judicial District Court, Clark County, Nevada, captioned as Malkin v. Sanchez. That matter is disclosed at Item 9 of the Statement of Financial Affairs attached to the bankruptcy petition.

<sup>3</sup> Each proof of claim was assigned, respectively, claim numbers 16-1, 17-1, and 18-1.

1 On November 26, 2019, Debtor filed three separate objections to the three Mullen POCs  
2 (“Claim Objections”). (ECF Nos. 73, 74 and 75).<sup>4</sup>

3 On December 4, 2019, Debtor noticed the three Claim Objections to be heard on January  
4 8, 2020. (ECF No. 105).

5 On December 24, 2019, Mullen filed a response to the Claim Objections. (ECF No. 117).

6 On January 8, 2020, the hearing on the Claim Objections was continued to January 22,  
7 2020.

8 On January 22, 2020, the hearing on the Claim Objections was continued to March 11,  
9 2020.

10 On February 11, 2020, Debtor filed with the court two separate notices representing that  
11 he had issued separate subpoenas on January 27, 2020, requesting documents from Mullen  
12 (“Document Subpoenas”). (ECF Nos. 179 and 180).

13 On March 4, 2020, Debtor filed the instant Motion seeking to compel Mullen to provide  
14 the documents requested by the Document Subpoenas. (ECF No. 185).

15 On March 9, 2020, an order shortening time was entered for the Motion to be heard on  
16 March 18, 2020. (ECF No. 190).

17 On March 16, 2020, Mullen filed an opposition to the Motion. (ECF No. 199).

18 On March 17, 2020, Debtor filed a reply in support of the Motion. (ECF No. 200).

19 **DISCUSSION**

20 By the instant Motion, Debtor seeks to compel Mullen to respond to the Document  
21 Subpoenas issued by his counsel on January 27, 2020, in connection with the Claim Objections.  
22 If Mullen does not respond to the Document Subpoenas, Debtor requests that Mullen be  
23 sanctioned by striking the Mullen POCs. See Motion at 9:11-13; Reply at 9:12-14. Mullen has  
24 filed an opposition raising a variety of issues and Debtor has filed a reply. Unfortunately, both  
25 sides to this Motion fail to recognize a threshold problem.

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<sup>4</sup> On November 28, 2019, Debtor filed an amended objection to one of the Mullen POCs.  
(ECF No. 80).

1 After Mullen filed opposition to the Claim Objections, they became contested matters  
2 governed by Bankruptcy Rule 9014. See, e.g., Keys v. 701 Mariposa Project, LLC (In re 701  
3 Mariposa Project, LLC), 514 B.R. 10, 16 (B.A.P. 9th Cir. 2014) (“Claims objections  
4 undoubtedly are contested matters subject to the requirements of Rule 9014.”); U.S. v. Levoy (In  
5 re Levoy), 182 B.R. 827, 834 (B.A.P. 9th Cir. 1995) (“Most authorities agree that claim  
6 objections are contested matters....Thus, we hold that Fed.R.Bankr.P. 9014 applies to objections  
7 to claims.”). See also In re Rockefeller Ctr. Props., 272 B.R. 524, 540 (Bank. S.D. N.Y. 2000)  
8 (“When an objection to a claim is contested, a contested matter is created.”).<sup>5</sup> Under Bankruptcy  
9 Rule 9014(c), the rules for adversary proceedings apply in contested matters, including the  
10 discovery rules governed by Bankruptcy Rules 7028 to 7037. Bankruptcy Rule 7034  
11 incorporates by reference Civil Rule 34 that governs the production of documents.

12 To obtain documents from another party, Civil Rule 34(b)(1) specifies the applicable  
13 procedure to be followed, while Civil Rule 34(b)(2) specifies the deadlines for responses and  
14 objections. With respect to nonparties, Civil Rule 34(c) specifies that nonparties may be  
15 compelled to produce documents as provided in Civil Rule 45.

16 Civil Rule 45(a)(3) sets forth the general requirements for the issuance of subpoenas by  
17 attorneys admitted to practice before the court. Civil Rule 45(e) specifies the response duties of  
18 persons served with a subpoena.

19 The Claim Objections were filed on November 26, 2019, and opposition was filed by  
20 Mullen on December 24, 2019. Despite the fact that the Claim Objections are contested matters  
21 and Mullen is a party, Debtor did not seek production of documents in compliance with Civil  
22 Rule 34(b)(1). Instead, on January 27, 2020, Debtor sought documents from Mullen by issuing  
23 subpoenas under Civil Rule 45(e) which applies only to nonparties. Because Mullen allegedly  
24 did not respond adequately to the Document Subpoenas, Debtor now seeks to compel Mullen to  
25 provide further responses. In essence, Debtor’s present Motion seeks to enforce subpoenas that  
26 never should have been issued.

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27 <sup>5</sup> Debtor is correct that Bankruptcy Rule 9016 provides that Civil Rule 45 applies in cases  
28 under the bankruptcy code. See Reply at 6:3-9. Bankruptcy Rule 9014, however, governs  
contested matters.

1 Under these circumstances, the court concludes that there is no legal basis to compel  
2 Mullen to respond to the Document Subpoenas. As a result, there also is no legal basis for the  
3 court to determine the sufficiency of any response previously provided by Mullen.

4 **IT IS THEREFORE ORDERED** that the Motion to Compel Compliance With  
5 Subpoena, brought by Jose Sanchez (“Debtor”), Docket No. 185, be, and the same hereby is,  
6 **DENIED.**

7 **IT IS FURTHER ORDERED** that a scheduling conference will be held on **April 29,**  
8 **2020, at 9:30 a.m.,** with respect to further proceedings on the Debtor’s objections to Claim Nos.  
9 16-1, 17-1, and 18-1, appearing at Docket Nos. 73, 74, and 80.

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11 Copies sent via CM/ECF ELECTRONIC FILING

12 Copies sent via BNC to:  
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