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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA

10 In re: LA CASA D LA RAZA, INC.,  
11 Debtor

Case No. CV 16-09437 -AB  
Adversary Bkcty Case No. 16-01040 PC  
Bkcty Case No. 9:16-bk-10331 PC

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14 TOMAS CASTELO,  
15 Appellant,

**ORDER AFFIRMING  
BANKRUPTCY COURT'S ORDERS**

16 v.

17 LA CASA DE LA RAZA, INC.,  
18 Appellee.  
19

20  
21 Appellant Tomas Castelo (“Appellant” or “Castelo”) appeals the bankruptcy  
22 court’s (“court”) November 3, 2016 Order (Dkt. No. 37)<sup>1</sup> on Plaintiff’s Motion for  
23 Sanctions and Entry of Default of Both Defendants, and its December 8, 2016 Order  
24 (Dkt. No. 55) denying Appellant’s Motion for Reconsideration of the November 3,  
25 2016 Order. Castelo filed an opening brief, Debtor/Appellee La Casa de la Raza (“La  
26 Casa”) filed a responsive brief, and Castelo filed a reply.<sup>2</sup> Upon review of the parties’

27 <sup>1</sup> All “Dkt. No.” references are to the docket of the adversary case, 16-ap-01040-PC.

28 <sup>2</sup> The parties’ filings are deficient in several respects. First, neither party included the excerpts of record as required by Fed. R. Bankr. P. 8018(b). Nor did the parties’

1 filings and the bankruptcy docket, the Court **AFFIRMS**.

2 **I. BACKGROUND**

3 The following facts are taken from the parties' briefs and documents filed  
4 below, particularly La Casa's August 16, 2016 Motion to Compel and for Sanctions  
5 (Dkt. No. 18) ; the September 15, 2016 Order granting that Motion (Dkt. Nos. 24, 25);  
6 La Casa's September 30, 2016 Motion for Terminating Sanctions (Dkt. No. 28); the  
7 October 20, 2016 Supplemental Declaration of Eric Bensamochian in Support of La  
8 Casa's Motion for Terminating Sanctions ("Bensamochian Decl.," Dkt. No. 35);  
9 Castelo's untimely November 2, 2016 Opposition to La Casa's Motion for  
10 Terminating Sanctions (Dkt. No. 36); the court's November 3, 2016 Order Granting  
11 La Casa's Motion (Dkt. No. 37); Castelo's November 14, 2016 Motion to Reconsider  
12 (Dkt. No. 40) and documents filed in connection therewith (Dkt. Nos. 44, 48, 50-52);  
13 and the court's December 8, 2016 Order Granting in Part and Denying in Part the  
14 Motion to Reconsider (Dkt. No. 53). The Court has also considered the transcripts  
15 from the November 3, 2016 hearing (Dkt. No. 74) and from the December 8, 2016  
16 hearing (Dkt. No. 76).

17 On May 5, 2016, Debtor/Appellee La Casa de la Raza ("La Casa") filed an  
18 adversary proceeding against its lienholder MLG Leasing, Inc. ("MLG") and MLG's  
19 principal Tomas Castelo ("Castello"). *See* Compl. (Dkt. No. 1.) At issue in the  
20 adversary proceeding was whether Castelo, who had acted as counsel for La Casa on  
21 many previous occasions, took an adverse security interest in his client La Casa  
22 without proper disclosures in violation of California Rule of Professional Conduct 3-  
23 300, and committed breach of contract and fraud. *Id.*

24 Starting May 13, 2016, La Casa served on Castelo Requests for Admission  
25 ("RFA") and Requests for Production of Documents ("RPD"). Castelo received  
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27 memoranda consistently support their assertions with citations to the record; rather,  
28 there are occasional references to the docket numbers, but most of the parties'  
assertions lack citations.

1 several extensions to respond but La Casa found his responses unsatisfactory, and  
2 moved to compel. Castelo did not file a timely response to the motion to compel and  
3 failed to appear at the September 15, 2016 hearing for it, so that same day, the  
4 bankruptcy court granted the motion and ordered Castelo to produce the requested  
5 documents and a privilege log within 14 days, that is, by September 29, and to pay La  
6 Casa its attorneys' fees incurred for the motion to compel.

7 On September 29, Castelo's counsel emailed La Casa that he had mailed the  
8 discovery package that same day, which was the due date. A receipt that Castelo's  
9 counsel later produced shows that he mailed the discovery responses via 2-day priority  
10 mail at 7:00 p.m., which is after business hours.

11 On September 30, La Casa filed a motion for terminating sanctions on the  
12 ground that Castelo did not comply with the September 15 court order. La Casa's  
13 counsel received Castelo's discovery on October 3, but due to the Rosh Hashanah  
14 Holiday, did not review it until October 4. Upon reviewing the discovery, La Casa's  
15 counsel found it to be deficient in numerous ways: page 2 was missing, there were  
16 numerous claims of privilege yet no privilege log was included despite the express  
17 court order to produce one, the pages were not Bates stamped, certain documents were  
18 redacted without explanation, and there "were no verifications accompanying any of  
19 the documents, which essentially renders the responses meaningless." *See*  
20 *Bensamochian Decl.* p. 3. La Casa brought Castelo's production and its deficiencies  
21 to the court's attention in an October 20, 2016 supplemental declaration.

22 Castelo did not timely oppose La Casa's motion for terminating sanctions.  
23 Instead, he filed an admittedly untimely opposition on November 2 (Dkt. No. 35), the  
24 day before the hearing. It appears that before the hearing, the bankruptcy judge  
25 entered a final order granting the motion for terminating sanctions on the ground that  
26 Castelo did not timely oppose it. *See* 11/3/2016 Transcript (Dkt. No. 74).<sup>3</sup>

27 \_\_\_\_\_  
28 <sup>3</sup> The Order also granted terminating sanctions as to MLG Leasing but that was an  
error so the court vacated that part of the Order and it is not relevant to this appeal.

1           Thereafter, Castelo filed a Motion for Reconsideration. Castelo's counsel  
2 argued, in effect, that he was preoccupied with certain family medical issues and thus  
3 missed the deadline to oppose the sanctions motion. He also said that he believed he  
4 did timely provide his response to La Casa's RPD when he mailed it the same day it  
5 was due. A Declaration of Counsel Tony Fischer filed with the motion also attempted  
6 to argue that the response was adequate, though this argument is quite difficult to  
7 follow.

8           At the hearing on the motion for reconsideration, the court determined that there  
9 was no clear error (the basis of the motion) under Rule 59 given the facts before it on  
10 November 3, including Castelo's failure to file a timely opposition. The court also  
11 found that reconsideration was not warranted under Rule 60(b)'s excusable neglect  
12 standard because although counsel stated he was out of town attending to family  
13 health issues up to September 22, the opposition was not due until October 20, about a  
14 month later. He concluded that no facts in the record established that the failure to file  
15 a timely opposition was excusable neglect. The court also noted that Castelo had a  
16 track record of non-compliance with court orders and missing deadlines, and that this  
17 had an impact on the judicial proceedings going forward. Finally, the court also stated  
18 that even if Castelo could show excusable neglect for his failure to oppose the  
19 sanctions motion, he did not demonstrate that his production of documents did in fact  
20 comply with the September 14 order compelling him to respond. The court also noted  
21 that the same discovery dispute had been ongoing for months without resolution, and  
22 that Castelo failed to respond to La Raza's counsel's multiple attempts to  
23 communicate with him since filing the motion for sanctions. Nor did Castelo attempt  
24 to cure the defects in his discovery responses while the motion for sanctions was  
25 pending. Based on Castelo's unexcused failure to oppose the sanctions motion, the  
26 ultimate insufficiency of Castelo's discovery responses, the ongoing nature of the  
27 dispute and Castelo's failures to work with La Raza to resolve it, the court found that  
28 termination remained an appropriate sanction and denied the motion for

1 reconsideration.

## 2 **II. LEGAL STANDARD**

3 The Court construes the Notice of Appeal as appealing both the order granting  
4 terminating sanctions and the order denying reconsideration thereof.

5 Discovery sanctions, including terminating sanctions, are reviewed for an abuse  
6 of discretion. *Connecticut Gen. Life Ins. Co. v. New Images of Beverly Hills*, 482 F.3d  
7 1091, 1096 (9th Cir. 2007).

8 A denial of a motion for reconsideration is also reviewed for an abuse of  
9 discretion. *389 Orange St. Partners v. Arnold*, 179 F.3d 656, 661 (9th Cir. 1999)

## 10 **III. DISCUSSION**

11 The court did not abuse its discretion by entering terminating sanctions against  
12 Castelo. The Ninth Circuit has established a set of five factors that a court should  
13 consider to determine whether “a case-dispositive sanction under Rule 37(b)(2) is just:  
14 ‘(1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to  
15 manage its dockets; (3) the risk of prejudice to the party seeking sanctions; (4) the  
16 public policy favoring disposition of cases on their merits; and (5) the availability of  
17 less drastic sanctions.’” *Connecticut Gen.*, 482 F.3d at 1096 (citation omitted).

18 Here, the court had before its La Casa’s motion for sanctions setting forth how  
19 Castelo violated the September 15 Order compelling Castelo to respond to La Casa’s  
20 RPD and explaining how those violations caused La Casa prejudice—factors that  
21 inform the sanctions decision. Castelo did not file a timely opposition to the motion  
22 for sanctions—it was due 14 days before the hearing, and he filed an opposition the  
23 day before, which the court did not learn of until after it issued its order. The court  
24 did not consider the untimely opposition and entered a final order granting the  
25 terminating sanction before the hearing. Where a party fails to timely oppose a  
26 motion, the court may deem it as consented to and grant it on that basis. *See* Local  
27 Bankruptcy Rule 7013-1(h) (“Failure to File Required Documents. Except as set forth  
28 in LBR 7056-1(g) with regard to motions for summary judgment, if a party does not

1 timely file and serve documents, the court may deem this to be consent to the granting  
2 or denial of the motion, as the case may be.”). Here, not only did Castelo not oppose  
3 the sanctions motion timely, he failed at all to oppose the motion to compel discovery  
4 responses—either by filing a brief or by appearing at the September 15 hearing. Thus,  
5 that Castelo would decline to oppose a motion was not unusual in this case. Also, La  
6 Raza’s counsel did inform the court in his October 20 declaration that Castelo sent an  
7 untimely response to the RPD, but that it was woefully inadequate and Castelo’s  
8 counsel refused to respond to his numerous efforts to address the deficiencies. *See*  
9 *Bensamochian Decl.* The court was therefore well within its discretion to deem  
10 Castelo’s failure to timely oppose the sanctions motion as consent to it.

11 Nor did the court abuse its discretion in denying the motion for reconsideration.  
12 The court construed the motion for reconsideration as invoking Rule 59’s clear error  
13 standard and Rule 60’s excusable neglect standard. As the above discussion indicates,  
14 based on the record then before it, the court was well within its discretion to terminate  
15 Castelo based on his discovery violations and failure to oppose the motion, so that  
16 ruling is not clear error. The court likewise was well within its discretion to find that  
17 Castelo did not establish excusable neglect for his failure to oppose the sanctions  
18 motion: although counsel was occupied with family medical issues earlier, the record  
19 suggested that those concluded about a week before La Raza filed its sanctions  
20 motion, so Castelo’s counsel’s explanation for his failure to oppose was not adequate  
21 to establish excusable neglect. Likewise, Castelo’s counsel’s failure to respond to La  
22 Raza’s counsel’s many attempts to address the deficient discovery responses  
23 reasonably reinforced the conclusion that his failure to oppose the sanctions motion  
24 was not excusable neglect.

25 Castelo argues, perhaps as to both the sanctions order and the denial of  
26 reconsideration, that La Raza’s motion for terminating sanctions itself violated Local  
27 Bankruptcy Rule 7026-2 because it did not include the request for production of  
28 documents. He argues that the court should have denied the motion on that basis

1 alone. However, La Raza notes that when it filed the sanctions motion on September  
2 30, it had not received any discovery responses whatsoever, so the exact contents of  
3 discovery requests themselves were not in issue, so La Raza was barred by Local  
4 Bankruptcy Rule 7026-2 from filing them. *See* Local Bankruptcy Rule 7026-2a  
5 (“The following discovery documents . . . *must not be filed with the clerk until there is*  
6 *a proceeding in which the document . . . is in issue:* (5) Requests for the production of  
7 documents or to inspect tangible things. . .”) (emphasis added). La Raza’s application  
8 of the rule to its circumstances was reasonable. Furthermore, the court was well  
9 within its discretion to grant the motion even though it lacked the RPD, especially  
10 because Castelo did not timely oppose the motion or respond to La Raza’s counsel in  
11 the interim.

12 **IV. CONCLUSION**

13 For the foregoing reasons, the Orders are **AFFIRMED**.

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17 Dated: September 26, 2017



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18 HONORABLE ANDRÉ BIROTTE JR.  
19 UNITED STATES DISTRICT COURT JUDGE

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21 CC: BK Court and BAP  
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