Roda and Adil Hiramanek
80 South Market Street
San Jose, CA 95113
Telephone: (408) 673-7560

Plaintiffs

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

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|---|---|
| ADIL HIRAMANEK, *et al.*,<br>Plaintiffs,<br>v.<br>L. MICHAEL CLARK, *et al.*,<br>Defendants | Case No. C-13-0228 EMC<br><br>PLAINTIFFS' ADMINISTRATIVE MOTION TO APPEAR BY TELEPHONE [Civil L.R.7-1(b)] |

## I. Introduction

Pursuant to Federal Rules of Civil Procedure Local Rules 7-1(b), Plaintiffs Adil and Roda Hiramanek ("Plaintiffs") requests that the Court permit Plaintiffs to appear on law and motion and case management conference hearings, (beginning with May 28, 2013 ex parte motion for temporary preliminary injunction or temporary restraining order), by telephone conference call.

The request is supported on the same medical sworn affidavit and support, as in Plaintiffs moving papers for her May 28, 2013 Ex Parte Motion for Temporary Preliminary Injunction/Temporary Restraining Order, which Court is requested to take judicial notice of pursuant to Fed. R. Evid. 201.

## II. Legal Standard

Local Civil Rule 7-1(b) allows that upon request, and with Judge's approval, a motion may be determined by telephone conference call.

> *In re Henson*, 302 BR 884 (2003), at p. 890-891 "However, both the Bankruptcy Code and the FRBP are silent as to the manner in which such appearances must be made, i.e., whether in person or by some alternative means such as telephone or video transmission. With respect to the latter alternative, modern technology offers a method of appearance that is fully equivalent to a personal appearance.. Indeed, while the U.S. Trustee notes that office's "general policy" to require personal appearance, it acknowledges that, in "rare" instances and "under extraordinary circumstances," that policy can be "relaxed" to accommodate those with "legitimate"

circumstances precluding personal appearance, such as by permitting telephone appearance in cases of disability or hospitalization. Moreover, various kinds of non-personal appearances are provided for in other contexts, such as discovery and at trial, see, respectively, Rule 30(b)(2) of the Federal Rules of Civil Procedure ("FRCP") (incorporated by FRBP 7030) and FRCP 43(a) (incorporated by FRBP 9017) — indeed, many judges regularly conduct hearings or entire calendars by appearing telephonically or by video transmission. It makes no sense to say that, if someone is too sick to attend a creditors' meeting in another city or across town, but well enough to appear by telephone, he or she should be denied an opportunity to appear by some reasonable means (such as telephone or video), particularly if no one will be prejudiced by such method of appearance. Nor is it appropriate for courts to deny debtors who absolutely cannot appear in person the right to appear by such alternative means on moralistic grounds — this is highlighted by those cases which deny prisoners the right to appear by other means. .....Where, as here, there may be no real reason why a telephone or video meeting should not suffice, under the particular facts of this case, the courts should not elevate the requirement that a debtor appear at a second § 341 meeting in a converted bankruptcy case into a moral issue."

## III. Why Telephone Conference Request?

1. Medical Constraint : Plaintiff Roda is 83 years old, needs externally supported oxygen, and is warned by her medical expert, in his sworn affidavit not to travel, as it could prove to be fatal.

2. Shortage of Judicial Officers in San Jose Division: Plaintiffs reside in San Jose, South Bay area. Plaintiffs filed their Complaint in San Jose Division of US Federal Court, Northern District. For reasons beyond Plaintiffs' control, and due to loss of Judge Jeremy Fogel, San Jose cases are now farmed out to remote divisions in US Northern District[1]. Plaintiffs are indifferent between judicial officers, but prefer local San Jose Division. To that end on Feb. 21, 2013, Plaintiffs requested that they are willing to consent to US Magistrate Paul Grewal, in San Jose (see Exhibit A-letter of Feb. 21, 2013). However, this Court denied Plaintiffs' request. Due to the reasons stated in Exhibit A, Plaintiffs request that at the minimum, this Court allow them to appear telephonically, to offset the reasons for Plaintiffs predicament, namely, shortage of Judges in San Jose, and denial of request to consent to US Magistrate Paul Grewal, both of which factors were not of Plaintiffs doing.

3. Indigency & Financial Constraints: Plaintiffs live in San Jose. A round trip to and from San Francisco US District Courthouse via Google Map comes to 50x2=100 miles. Plaintiff Roda is an 83 year old elder widow with no means of transport and medically not in a position to travel for long hours

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[1] http://www.cand.uscourts.gov/news/53; District-Wide Assignment of San Jose Civil Cases

(she is disabled needing externally assisted oxygen). Plaintiffs are also indigent. This Court on Mar. 25, 2013 granted Plaintiffs Motion to proceed in forma pauperis. Even if Plaintiffs could physically and medically tolerate travel, they cannot *afford* long distance travel, parking, et al.

IV. Conclusion

Plaintiffs request that, given the narrowly tailored request limited to law and motion hearings and case management conferences, given the liberal use of telephone appearance in Federal Courts, given the technological advances in communications, given the legal standard, that Court grant the motion to allow Plaintiffs to appear by telephone conference.

Respectfully submitted,

Dated: May 24, 2013 A. K. Hiramanek
Adil Hiramanek, Plaintiff

R. Hiramanek
Roda Hiramanek, Plaintiff

Declaration Of Adil And Roda Hiramanek

We, Roda and Adil Hiramanek declare under penalty of perjury that we are the plaintiffs in the above entitled case and that the information set forth in this motion is true and correct and based upon information and belief. We offer this declaration in support of our request that good cause reasons exist to permit the attached Documents Submitted Under Seal to be filed under seal

We re-affirm the reasons stated in our motion to request telephone conference hearing.

Pursuant to Fed. R. Evid. 201 we request the Court to take judicial notice of the following;

1. Plaintiffs' Ex Parte Motion, And Notice Of Motion, And Motion For Preliminary Injunction, Memorandum Of Points And Authorities In Support Thereof [FRCP 65; Civil L.R.65], Plaintiffs' Request For Judicial Notice In Support Of Motion For Preliminary Injunction; Declaration Of Roda Hiramanek
2. Attached Exhibit A, a true and correct copy of Plaintiff's letter to Judge Edward Chen of Feb. 21, 2013

We humbly request that Court grant the relief requested in our motion

Dated: May 24, 2013 A. K. Hiramanek
Adil Hiramanek, Plaintiff

R. Hiramanek
Roda Hiramanek, Plaintiff

# EXHIBIT A

**RODA AND ADIL HIRAMANEK**
*80 South Market Street*
*San Jose, CA 95113*
408-673-7560

Feb. 21, 2013

Via Email
Judge Edward Chen
San Francisco US District Court
San Francisco

RE: Hiramanek v. L. Michael Clark et al. CV-13-0228

Dear Judge Chen,

We filed our case in San Jose Federal Court. We have learned that the case is now assigned to you in San Francisco.

We are in San Jose. Plaintiff Roda is an 83 year old elder widow with no means of transport and medically not in a position to travel for long hours (she is disabled needing externally assisted oxygen).

Plaintiffs are also indigent and cannot afford long distance travel.

Given both medical and financial constraints can you please transfer the case to San Jose before Magistrate Paul Grewal. Attached is our consent to Magistrate Grewal. We do not consent to Magistrate Howard Lloyd due to a conflict of Interest.

We understand that when defendants appear on this case, they have a right to decline consent to the magistrate

Thank you.

Sincerely,

A K Hiramanek

Adil Hiramanek

Roda Hiramanek

Roda Hiramanek
(prepared with assistance)

Roda and Adil Hiramanek
80 South Market Street
San Jose, CA 95113
Telephone: (408) 673-7560

Plaintiffs

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

| | |
|---|---|
| ADIL HIRAMANEK, *et al.*,<br>Plaintiffs,<br>v.<br>L. MICHAEL CLARK, *et al.*,<br>Defendants | Case No. C-13-0228 EMC<br><br>[PROPOSED] ORDER GRANTING MOTION TO APPEAR BY TELEPHONE |

The Court has considered the Plaintiffs' Administrative Motion To Appear By Telephone [Civil L.R.7-1(b)]. Finding that good cause exists, the Motion is GRANTED.

IT IS SO ORDERED.

DATED: 5/30/13

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
IT IS SO ORDERED
Judge Edward M. Chen

Magistrate Judge

Adil and Roda Hiramanek
80 South Market Street
San Jose, CA 95113
Telephone: (408) 673-7560

Plaintiffs

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

| | |
|---|---|
| ADIL HIRAMANEK, *et al.*,<br>Plaintiffs,<br>v.<br>L. MICHAEL CLARK, *et al.*,<br>Defendants | Case No. C-13-0228 EMC<br>**CERTIFICATE OF SERVICE** |

I, the undersigned, hereby certify that my address is 80 South Market Street, San Jose, California 95113.

That on May 24, 2013, I served a true and correct copy(ies) of the attached Plaintiffs' Ex Parte Motion, And Notice Of Motion, And Motion For Preliminary Injunction, Memorandum Of Points And Authorities In Support Thereof [FRCP 65; Civil L.R.65], Plaintiffs' Request For Judicial Notice In Support Of Motion For Preliminary Injunction; Declaration Of Roda Hiramanek; Plaintiffs' Administrative Motion To File Under Seal, Plaintiffs' Administrative Motion To Appear by Telephone by personally delivering said copy(ies) in a envelope addressed to the person(s) hereinafter

1. Superior Court of California, 191 N. First Street, San Jose, CA 95113
2. David Yamasaki, 191 N. First Street, San Jose, CA 95113
3. Santa Clara County, 70 West Hedding Street, 9th Floor, San Jose, CA 95110, CA 95113.
4. Judge L. Michael Clark, Superior Court of California, 191 N. First Street, San Jose, CA 95113.
5. Judge Richard Loftus, Superior Court of California, 191 N. First Street, San Jose, CA 95113.

Dated: May 24, 2013

A. Hiramanek

Adil Hiramanek