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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 In re CESAR MONTIEL PEREZ,
12 Debtor.
13 _____
14 MAURICE GRAYTON,
15 Appellant,
16 v.
17 UNITED STATES TRUSTEE
18 Appellee.

Case No.: 21-CV-83 JLS (MSB)

**ORDER GRANTING MOTION TO
DISMISS APPEAL**

(ECF No. 7)

19
20 Presently before the Court is Appellee United States Trustee Tiffany Carroll's
21 Motion to Dismiss Appeal ("Mot.," ECF No. 7). The Court took the matter under
22 submission without oral argument pursuant to Civil Local Rule 7.1(d)(1). *See generally*
23 ECF No. 10. Appellant Maurice Grayton ("Appellant" or "Mr. Grayton"), proceeding *pro*
24 *se*, never filed an opposition to the motion.

25 On March 11, 2021, the Court vacated merits briefing on the present appeal pending
26 resolution of Appellee's motion to dismiss. ECF No. 10 at 1. The Court ordered Appellant
27 to file an opposition to Appellee's motion by April 1, 2021. *Id.* at 2. The Court warned
28 Appellant that it "may treat a failure to timely file an opposition to the motion to dismiss

1 as Appellant’s consent to the granting of the motion.” *Id.* at 2. In lieu of filing an
2 opposition, Appellant filed his opening brief on March 31, 2021. *See* ECF No. 12.

3 The Ninth Circuit has held that pursuant to a local rule, a district court may properly
4 grant a motion to dismiss for failure to respond. *See generally Ghazali v. Moran*, 46 F.3d
5 52, 53 (9th Cir. 1995) (affirming dismissal for failure to file timely opposition papers where
6 plaintiff had notice of the motion and ample time to respond). The Court could grant
7 Appellee’s Motion and dismiss the appeal on this basis; however, given Appellant’s *pro se*
8 status and public policy favoring disposition of cases on their merits, *see, e.g., Hernandez*
9 *v. City of El Monte*, 138 F.3d 393, 399 (9th Cir. 1998), the Court examines the question of
10 its own appellate jurisdiction on the merits. Having carefully reviewed the relevant law,
11 the Court **GRANTS** Appellee’s Motion to Dismiss.

12 **BACKGROUND**

13 On January 3, 2020, the United States Trustee initiated an adversary proceeding
14 against Mr. Grayton in the United States Bankruptcy Court for the Southern District of
15 California. Mot. at 2; *see generally United States Trustee v. Grayton*, No. 3:20-ap-90002-
16 MM (Bankr. S.D. Cal.). Appellee alleges that Mr. Grayton “repeatedly refused to
17 cooperate” with discovery requests in the bankruptcy court action. Mot. at 2. Therefore,
18 Appellee filed two motions: one seeking to compel Mr. Grayton to produce initial
19 disclosures, and another to compel Mr. Grayton to appear for his deposition. *Id.*; *see United*
20 *States Trustee v. Grayton*, No. 3:20-ap-90002-MM (Bankr. S.D. Cal.), (ECF Nos. 106,
21 114).¹ Appellee also sought associated fees and costs. Mot. at 2. Mr. Grayton did not
22 respond to the motions. *Id.* On January 18, 2021, the bankruptcy court granted the United
23 States Trustee’s motions and awarded costs. *Id.*; *see United States Trustee v. Grayton*, No.
24 3:20-ap-90002-MM (Bankr. S.D. Cal.), (“Sanctions Order,” ECF No. 162), (“Dep. Order,”
25 ECF No. 162).

26
27 ¹ A court “may take notice of proceedings in other courts, both within and without the federal judicial
28 system, if those proceedings have a direct relation to matters at issue.” *Bias v. Moynihan*, 508 F.3d 1212,
1225 (9th Cir. 2007) (quoting *Bennett v. Medtronic, Inc.*, 285 F.3d 801, 803 n.2 (9th Cir. 2002)).

1 On January 15, 2021, Mr. Grayton filed a notice of appeal. *See generally* “Notice
2 of Appeal,” ECF No. 1. Under the section where Mr. Grayton must identify the subject of
3 this appeal, he lists “Motion to Compel Initial Discovery, Motion for Attendance
4 Deposition, Motion for Sanctions.” *Id.* at 1. The Court liberally construes this statement
5 to mean Mr. Grayton seeks to appeal the bankruptcy court orders granting the
6 aforementioned motions. This action is one of four appeals² filed by Appellant in this
7 District related to the underlying bankruptcy action, which is still pending before the
8 bankruptcy court. *See generally* Docket of *United States Trustee v. Grayton*, No. 3:20-ap-
9 90002-MM (Bankr. S.D. Cal.). On March 10, 2021, Appellee filed the present Motion to
10 Dismiss Appeal for lack of jurisdiction. ECF No. 3.

11 LEGAL STANDARD

12 Federal district courts have jurisdiction over appeals of “final judgments, orders, and
13 decrees” of bankruptcy courts. *See* 28 U.S.C. § 158(a)(1). Generally, district courts lack
14 jurisdiction over appeals from interlocutory orders of bankruptcy judges except where the
15 district court grants leave to appeal under 28 U.S.C. § 158(a)(3).

16 A determination of whether an order is final or interlocutory is jurisdictional and
17 therefore can be raised sua sponte and reviewed de novo by an appellate court. *See In re*
18 *Bonham*, 229 F.3d 750, 760–61 (9th Cir. 2000); *In re Belli*, 268 B.R. 851, 853 (B.A.P. 9th
19 Cir. 2001). Denial of leave to appeal is left to the sound discretion of the court. *See In re*
20 *City of Desert Hot Springs*, 339 F.3d 782, 787 (9th Cir. 2003).

21 ANALYSIS

22 I. Appeal as of Right

23 Under section 158(a)(1), parties may appeal to a district court “final” orders in
24 bankruptcy cases and proceedings “as of right.” 28 U.S.C. § 158(a)(1); *see Ritzen Grp.,*
25 *Inc. v. Jackson Masonry, LLC*, 140 S. Ct. 582, 587 (2020); *Bullard v. Blue Bills Bank*, 575
26 U.S. 496 (2015). In the context of an adversary proceeding, an order is final if it would be
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28 ² *See* case nos. 3:20-cv-01616, 3:20-cv-02152, and 3:20-cv-02433.

1 considered an appealable final order in an ordinary federal civil action under 28 U.S.C.
2 § 1291. *In re Belli*, 268 B.R. at 855 (“Finality for purposes of jurisdiction over ‘as of right’
3 appeals under 28 U.S.C. § 158(a)(1) in adversary proceedings does not differ from finality
4 in ordinary federal civil actions under 28 U.S.C. § 1291.”). Federal Rule of Civil Procedure
5 54(b) “controls the analysis of finality of judgments for purposes of appeal in federal civil
6 actions, including bankruptcy adversary proceedings.” *Id.* (citing Fed. R. Civ. P. 54(b),
7 *incorporated by Fed. R. Bankr. P. 7054(a)*); see *Matter of King City Transit Mix, Inc.*, 738
8 F.2d 1065, 1066–67 (9th Cir. 1984) (applying Rule 54(b) in bankruptcy adversary
9 proceedings). If there is a Rule 54(b) certification, it is treated as a final order over which
10 appellate jurisdiction exists “as of right” under 28 U.S.C. § 158(a)(1).

11 However, the Ninth Circuit has held that “the fluid and sometimes chaotic nature of
12 bankruptcy proceedings necessitates a degree of jurisdictional flexibility.” *In re Landmark*
13 *Fence Co., Inc.*, 801 F.3d 1099, 1102 (9th Cir. 2015). “Congress has long provided that
14 orders in bankruptcy cases may be immediately appealed if they finally dispose of discrete
15 disputes within the larger case.” *Howard Delivery Service, Inc. v. Zurich American Ins.*
16 *Co.*, 547 U.S. 651, 657, n.3 (2006) (internal quotation marks and emphasis omitted).
17 Section 158 provides the appellate court with jurisdiction over orders in bankruptcy cases
18 that alter “the legal relationships among the parties.” *Bullard*, 575 U.S. at 506. Therefore,
19 to determine whether a particular order is final, the court examines “whether the
20 bankruptcy court’s decision: ‘1) resolves and seriously affects substantive rights and 2)
21 finally determines the discrete issue to which it is addressed.’” *In re Gugliuzza*, 852 F.3d
22 884, 894 (9th Cir. 2017) (quoting *In re Perl*, 811 F.3d 1120, 1126 (9th Cir. 2016)). If
23 “further proceedings in the bankruptcy court will affect the scope of the order, the order is
24 not subject to review.” *In re Tech. Knockout Graphics, Inc.*, 833 F.2d 797, 800 (9th Cir.
25 1987) (quoting *In re 405 N. Bedford Dr. Corp.*, 778 F.2d 1374, 1377 (9th Cir. 1985)).

26 The bankruptcy court’s orders granting Appellee’s discovery motions and awarding
27 costs are not final orders that Appellant may appeal as of right. See *Nascimento v. Dummer*,
28 508 F.3d 905, 909 (9th Cir. 2007) (“Discovery orders . . . are interlocutory and thus not

1 usually subject to immediate appeal.”); *City of Las Vegas v. Foley*, 747 F.2d 1294, 1297
2 (9th Cir. 1984) (“A discovery order, unlike a final order, is interlocutory and non-
3 appealable . . .”); *David v. Hooker, Ltd.*, 560 F.2d 412, 415 (9th Cir. 1977) (“[D]iscovery
4 orders and sanctions in the form of civil penalties are held in most cases to be interlocutory
5 and hence non-appealable as to the parties involved in the suit . . .”). A review of the
6 docket of the bankruptcy court proceedings reveals there has been no Rule 54(b)
7 certification in Appellant’s case. *See generally* Docket of *United States Trustee v. Grayton*,
8 No. 3:20-ap-90002-MM (Bankr. S.D. Cal.). Further, the bankruptcy court’s orders did not
9 adjudicate the parties’ respective rights and liabilities. The bankruptcy court may revise or
10 revisit its findings in these orders as the case progresses.

11 Therefore, the Court finds that the bankruptcy court’s orders are not appealable as a
12 matter of right. The Court now turns to whether to exercise its discretion and grant
13 interlocutory review.

14 **II. Interlocutory Appeal**

15 If an order is not final, the district court has jurisdiction to hear an appeal of an
16 interlocutory order of a bankruptcy court if the district court grants leave to appeal. *See* 28
17 U.S.C. § 158(a); Fed. R. Bankr. P. 8002, 8004(a)(2)(b). In deciding whether to grant leave
18 to appeal under Section 158(a)(3), courts look to the analogous provisions of 28 U.S.C.
19 § 1292(b) governing review of interlocutory district court orders by the courts of appeal.
20 *See In re Belli*, 268 B.R. at 858; *In re Wilson*, No. BR 13-11374 AJ, 2014 WL 122074, at
21 *1 (N.D. Cal. Jan. 10, 2014). Therefore, leave to appeal a bankruptcy court’s interlocutory
22 order is appropriate where (1) there is a controlling question of law, (2) as to which a
23 substantial ground for a difference of opinion exists, and (3) an immediate appeal could
24 materially advance the ultimate termination of the litigation. *In re Cement Antitrust Litig.*
25 (*MDL No. 296*), 673 F.2d 1020, 1026 (9th Cir. 1981); *see also In re NSB Film Corp.*, 167
26 B.R. 176, 180 (B.A.P. 9th Cir. 1994) (“Leave to appeal should not be granted unless refusal
27 would result in wasted litigation and expense, the appeal involves a controlling question of
28 law as to which there is a substantial ground for difference of opinion, and an immediate

1 appeal would materially advance the ultimate termination of the litigation.”). Additionally,
2 “[i]nterlocutory appeals are generally disfavored and should only be granted where
3 extraordinary circumstances exist.” *In re Cameron*, No. C 13-02018 SI, 2014 WL
4 1028436, at *4 (N.D. Cal. Mar. 17, 2014).

5 As an initial matter, Appellant has not filed a motion for leave to appeal the
6 bankruptcy court’s interlocutory orders. *See* Fed. R. Bankr. P. 8004(a) (requiring a party
7 seeking to appeal an interlocutory order under 28 U.S.C. § 158(a)(3) to file with his notice
8 of appeal a motion for leave to appeal with certain required information). However, the
9 Court “may treat a notice of appeal as a motion for leave to file an interlocutory appeal.”
10 *In re Belice*, 461 B.R. 564, 572 (B.A.P. 9th Cir. 2011); *see also Balistreri v. Pacifica Police*
11 *Dep’t*, 901 F.2d 696, 699 (9th Cir. 1988) (“This court recognizes that it has a duty to ensure
12 that pro se litigants do not lose their right to a hearing on the merits of their claim due to
13 ignorance of technical procedural requirements.” (citations omitted)).

14 Here, Appellant does not carry his burden to show that the orders meet the § 1292(b)
15 test. Appellant offers no argument as to how this appeal involves a controlling question of
16 law as to which there is a substantial ground for difference of opinion, and the existence of
17 such a question is not readily apparent to the Court from the interlocutory orders
18 themselves. In his opening brief, Appellant argues his positions on the issues he wishes to
19 appeal. *See generally* ECF No. 12. However, this information is not pertinent to the legal
20 framework under which this Court analyzes a motion for leave to file an interlocutory
21 appeal. Granting leave to appeal in this instance would waste judicial resources, increase
22 litigation expense, and would only serve to delay the ultimate termination of this action.

23 Accordingly, the Court declines to exercise its discretion to hear this interlocutory
24 appeal.

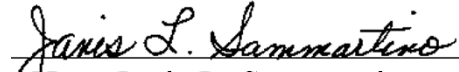
25 CONCLUSION

26 For the reasons stated above, the Court finds the bankruptcy court’s orders granting
27 Appellee’s discovery motions and awarding fees are interlocutory orders. Further, the
28 Court finds interlocutory review is not warranted, and Appellant has not identified another

1 basis for jurisdiction. Accordingly, Appellee's motion to dismiss the appeal for lack of
2 jurisdiction is **GRANTED**. The Court **DISMISSES** the appeal for lack of jurisdiction.
3 The Clerk of Court **SHALL CLOSE** the file.

4 **IT IS SO ORDERED.**

5 Dated: April 27, 2021


6 Hon. Janis L. Sammartino
7 United States District Judge

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