

OCT 23 2013

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>In re: DANNY WAYNE PRYOR,</p> <p style="text-align: center;">Debtor,</p> <hr/> <p>DANNY WAYNE PRYOR,</p> <p style="text-align: center;">Appellant,</p> <p style="text-align: center;">v.</p> <p>ITEC FINANCIAL, INC.,</p> <p style="text-align: center;">Appellee.</p>
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No. 11-60066

BAP No. 10-1258

MEMORANDUM\*

Appeal from the Ninth Circuit  
Bankruptcy Appellate Panel  
Pappas, Kirscher, and Sargis, Bankruptcy Judges, Presiding

Submitted October 15, 2013\*\*

Before: FISHER, GOULD, and BYBEE, Circuit Judges.

\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Danny Wayne Pryor appeals pro se from the Bankruptcy Appellate Panel's ("BAP") judgment affirming the bankruptcy court's decision that Pryor's debt to ITEC Financial, Inc. was nondischargeable under 11 U.S.C. § 523(a)(2)(A). We have jurisdiction under 28 U.S.C. § 158(d). We review de novo BAP decisions, and apply the same standard of review that the BAP applied to the bankruptcy court's ruling. *Boyajian v. New Falls Corp. (In re Boyajian)*, 564 F.3d 1088, 1090 (9th Cir. 2009). We affirm.

The bankruptcy court did not abuse its discretion in striking Pryor's answer and directing entry of default based on Pryor's willful failure to attend a status conference, cooperate in the discovery process, and timely respond to the court's order to show cause. *See Halaco Eng'g Co. v. Costle*, 843 F.2d 376, 379 (9th Cir. 1988) (setting forth standard of review and explaining that this court will not reverse sanctions absent "a definite and firm conviction" that the lower court made "a clear error of judgment"); *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130-33 (9th Cir. 1987) (setting forth five factors for court to weigh in determining whether severe sanction is appropriate).

The bankruptcy court did not err in granting default judgment to ITEC for an exception to discharge under 11 U.S.C. § 523(a)(2)(A) because the court had ample evidence of Pryor's false representations, supporting nondischargeability of

Pryor's debt to ITEC. *See* 11 U.S.C. § 523(a)(2)(A) (excepting from discharge debt obtained by false pretenses, false representations, or actual fraud); *Ghomeshi v. Sabban (In re Sabban)*, 600 F.3d 1219, 1222 (9th Cir. 2010) (setting forth elements under § 523(a)(2)(A)).

We decline to address contentions that Pryor did not properly raise below, including his contentions concerning California's usury law and damages. *See Fla. Partners Corp. v. Southeast Co. (In re Southeast Co.)*, 868 F.2d 335, 339-40 (9th Cir. 1989) (declining to address issue not raised before bankruptcy court).

We deny as unnecessary Pryor's motion, filed on October 21, 2011, to supplement the record on appeal.

**AFFIRMED.**