

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Ronald H. Sargis**

Bankruptcy Judge  
Modesto, California

April 30, 2015 at 2:30 p.m.

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1. [10-94411](#)-E-7 CAROLE CAMERON CONTINUED STATUS CONFERENCE RE:  
[14-9005](#) COMPLAINT  
FERLMANN V. GARRETT ET AL 1-30-14 [[1](#)]

Final Ruling: No appearance at the April 30, 2015 Status Conference is required.

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Plaintiff's Atty: Carl W. Collins  
Defendant's Atty:  
Samuel Kelsall [Karen J. Garrett]  
unknown [Glenn Alan Garrett]

Adv. Filed: 1/30/14  
Answer: 3/26/14  
Nature of Action:  
Recovery of money/property - fraudulent transfer  
Recovery of money/property - other

**The Status Conference is continued to 2:30 p.m. on July 2, 2015, to allow the parties the opportunity to consummate the settlement of this Adversary Proceeding approved by the court.**

Notes:

Continued from 12/18/14 to allow the Parties to consummate the settlement which has been approved by the court.

Plaintiff's Sixth Status Conference Statement filed 4/23/15 [Dckt 28]

April 30, 2015 at 2:30 p.m.

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2. [10-94411-E-7](#) CAROLE CAMERON  
[14-9006](#)  
FERLMANN V. GARRETT

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
1-30-14 [[1](#)]

**Final Ruling: No appearance at the April 30, 2015 Status Conference is required.**

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Plaintiff's Atty: Carl W. Collins  
Defendant's Atty: Samuel Kelsall

Adv. Filed: 1/30/14  
Answer: 3/18/14  
Nature of Action:  
Recovery of money/property - fraudulent transfer  
Recovery of money/property - other  
Approval of sale of property of estate and of a co-owner

**The Status Conference is continued to 2:30 p.m. on July 2, 2015, to allow the parties the opportunity to consummate the settlement of this Adversary Proceeding approved by the court.**

Notes:  
Continued from 12/18/14 to allow the Parties to consummate the settlement which has been approved by the court.

Plaintiff's Sixth Status Conference Statement filed 4/23/15 [Dckt 55]

3. [14-91565-E-11](#) RICHARD SINCLAIR  
[15-9007](#)  
KATAKIS ET AL V. SINCLAIR

STATUS CONFERENCE RE: COMPLAINT  
2-20-15 [[1](#)]

Plaintiff's Atty: Kimberley V. Deede  
Defendant's Atty: Pro Se

Adv. Filed: 2/20/15  
Answer: 3/30/15

Nature of Action:  
Dischargeability - willful and malicious injury

Notes:

The Status Conference is ~~XXXXXXXXXXXXXXXXXXXX~~.

#### APRIL 30, 2015 STATUS CONFERENCE

#### SUMMARY OF COMPLAINT

Andrew Katakis, California Equity Management Group, Inc., and New Century Townhomes of Turlock Owners' Association ("Plaintiffs") have filed a complaint to determine the nondischargeability of debt. It is asserted that claims arising out of Plaintiffs' malicious prosecution action, Stanislaus County Superior Court case no. 668157, which is pending, are nondischargeable pursuant to 11 U.S.C. § 523(a)(6) [willful and malicious conduct]. The damages, which were awarded as defense costs in the action brought by Richard Sinclair, the Defendant-Debtor, are stated to be \$783,141.67 (arising from a 36 day trial).

#### SUMMARY OF ANSWER

Richard Sinclair, the Defendant-Debtor, has answered the Complaint, admitting and denying specific allegations therein. Defendant-Debtor asserts twenty-three affirmative defenses.

#### FINAL BANKRUPTCY COURT JUDGMENT

The Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334(b) and (d), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Complaint ¶ 5, Dckt. 1. In its answer, the Defendant-Debtor admits the allegations of jurisdiction and core proceedings. Answer ¶ 5, Dckt. 16. To the extent that any issues in this Adversary Proceeding are "related to" matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.

The court shall issue a Pre-Trial Scheduling Order setting the following dates and deadlines:

a. The Plaintiff alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334(b) and (d), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Complaint ¶ 5, Dckt. 1. In its answer, the Defendant-Debtor admits the allegations of jurisdiction and core proceedings. Answer ¶ 5, Dckt. 16. To the extent that any issues in this Adversary Proceeding are "related to" matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.

b. Initial Disclosures shall be made on or before -----, 2015.

c. Expert Witnesses shall be disclosed on or before -----, 2015, and Expert Witness Reports, if any, shall be exchanged on or before -----, 2015.

d. Discovery closes, including the hearing of all discovery motions, on -----, 2015.

e. Dispositive Motions shall be heard before -----, 2015.

f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at ----- p.m. on -----, 2015.

4. [14-91565-E-11](#) RICHARD SINCLAIR  
[15-9008](#)  
CALIFORNIA EQUITY MANAGEMENT  
GROUP, INC. ET AL V. SINCLAIR

STATUS CONFERENCE RE: COMPLAINT  
2-23-15 [[1](#)]

**Tentative Ruling:** The Status Conference in this Adversary Proceeding is set for April 30, 2015.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling.**

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Plaintiff's Atty: Hilton A. Ryder  
Defendant's Atty: Pro Se

Adv. Filed: 2/23/15  
Answer: 3/30/15

Nature of Action:  
Dischargeability - false pretenses, false representation, actual fraud  
Dischargeability - fraud as fiduciary, embezzlement, larceny  
Dischargeability - willful and malicious injury

<p><b>The Status Conference is continued to 2:30 p.m. January 14, 2016.</b> On or before January 5, 2015, each party shall file a Status Report as to the District Court Action and recommendation for a further continued date if the District Court Action has not been concluded at that time.</p>
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Notes:

Request for Entry of Default by Plaintiffs filed 3/27/15 [Dckt 8]; Memorandum Re: Default Papers filed by the court 4/1/15 [Dckt 10]

#### **SUMMARY OF COMPLAINT**

California Equity Management Group, Inc. And Fox Hollow of Turlock Owners' Association ("Plaintiffs") seeks to have the damages relating to the claims asserted in a pending District Court Action, case 03-05439, are nondischargeable pursuant to 11 U.S.C. § 523(a)(2), (4) and (6). The default of Richard Sinclair ("Defendant-Debtor") has been entered in the District Court Action, but no judgment has been entered therein.

#### **SUMMARY OF ANSWER**

Richard Sinclair, the Defendant-Debtor, filed an answer which specifically admits and denies the allegations in the Complaint. Defendant-Debtor assets

twenty-three affirmative defenses.

#### **MOTION FOR SUMMARY JUDGMENT**

On April 23, 2015, Plaintiffs filed a Motion for Summary Judgment. The Motion states with particularity (Fed. R. Civ. P. 7(b) and Fed. R. Bank. P. 7007) the following grounds:

A. The Motion is based on the Memorandum of Points and Authorities, Statement of Undisputed Facts, the Complaint, Request for Judicial Notice, all other unspecified pleadings and papers in the file, and any other evidence and authority that Plaintiff choose to present prior to or at the hearing.

B. The Motion seeks to have the damages alleged in the District Court Action (for which there is no judgment) determined nondischargeable pursuant to 11 U.S.C. § 523(a)(2), (4), and (6).

C. The District Court Action alleges claims arising under RICO.

D. Defendant-Debtor's answer was struck in the District Court Action and his default entered.

E. "Only" a prove up hearing is required for Plaintiffs to obtain a judgment in the District Court Action.

F. The wrongful acts alleged to have been committed by Defendant-Debtor are alleged to have been litigated in a thirty-six day trial in the State Court, case no. 332233.

G. It is alleged that application of the doctrines of Res Judicata and Collateral Estoppel preclude the re-litigation of determinations made in the State Court Action.

Motion, Dckt. 11.

Plaintiffs are also Plaintiffs in a separate adversary proceedings, No. 15-9008, in which they seek to have the damages awarded in the State Court Action determined nondischargeable. A judgment has been awarded in the State Court Action.

#### **FINAL BANKRUPTCY COURT JUDGMENT**

The Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334, and that this is a core proceeding pursuant to 28 U.S.C. § 157(b). Complaint ¶ Unnumbered, p. 41:21-23, Dckt. 1. In his answer, Richard Sinclair, the Defendant-Debtor, does not expressly admit or deny the allegations of jurisdiction and core matter proceeding in the unnumbered paragraph on page 41 of the Complaint. Federal Rule of Bankruptcy Procedure 7012(b) requires that a responsive pleading to a complaint shall admit or deny an allegation that it is a core or non-core proceeding. If non-core, the responsible pleading shall state whether the responding party consents to the issuances of final orders and judgment by the bankruptcy judge. Fed. R. Bankr. P. 7012(b). It appears that the pleading style in the Complaint, placing the allegation of jurisdiction and core proceeding on page 41 in an unnumbered paragraph may have cause the inadvertent failure to admit

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or deny that allegation.

At the hearing, Defendant-Debtor stated on the record that the Complaint, as pleaded, is a **core/non-core** proceeding. To the extent that any issues in this Adversary Proceeding are "related to" matters, the parties consented on the record to this bankruptcy court entering the final orders and judgment in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.

#### **STAY OF BANKRUPTCY COURT PROCEEDING**

The claims sought to be determined non-dischargeable in this Adversary Proceeding have not yet been reduced to a judgment in the District Court Action. The Complaint in Case No. 03-05439 was filed on April 4, 2003. The District Court docket reflects that no judgment has been entered in the District Court. The pending matters in the District Court Action include:

- A. Motion for Judgment filed by Plaintiffs.
- B. Motion to Amend Schedule to Allow Filing of Counterclaim.
- C. Motion for New Trial

This District Court Action has been pending for 12 years and now has pending a motion for entry of a judgment therein. It makes little sense for this court to start such litigation fresh. After a final judgment is obtained in the District Court Action the parties can then proceed with this litigation, applying the doctrines of collateral estoppel and res judicata as appropriate.

Therefore, the court will stay this Adversary Proceeding and issue an order modifying the automatic stay to allow the parties to proceed with the District Court litigation to a final judgment, including the completion of all appeals, if any.

The court shall issue a Status Conference Scheduling Order setting the following dates and deadlines:

- a. The Plaintiff alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334, and that this is a core proceeding pursuant to 28 U.S.C. § 157(b). Complaint ¶ Unnumbered, p. 41:21-23, Dckt. 1. In his answer, Richard Sinclair, the Defendant-Debtor, does not expressly admit or deny the allegations of jurisdiction and core matter proceeding in the unnumbered paragraph on page 41 of the Complaint. Federal Rule of Bankruptcy Procedure 7012(b) requires that a responsive pleading to a complaint shall admit or deny an allegation that it is a core or non-core proceeding. If non-core, the responsible pleading shall state whether the responding party consents to the issuances of final orders and judgment by the bankruptcy judge. Fed. R. Bankr. P. 7012(b). It appears that the pleading style in the Complaint, placing the allegation of jurisdiction and core proceeding on page 41 in an unnumbered paragraph may have caused the inadvertent failure to admit or deny that allegation.

At the hearing, Defendant-Debtor stated on the record that the Complaint, as pleaded, is a **core/non-core** proceeding. To the extent that any issues in this Adversary Proceeding are "related to" matters, the parties consented on the record to this bankruptcy court entering the final orders and judgment in this Adversary Proceeding as provided

in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.

b. All matters in this Adversary Proceeding are stay pending further order of this court.

c. The Status Conference is continued to 2:30 p.m. on January 14, 2015. On or before January 5, 2015, each party shall file a Status Conference Report Update advising the court of the status of the District Court Action, ED Cal. No. 03-05439, whether final judgment has been entered therein, and the status of appeals, if any.

d. The automatic stay is modified to allow all parties to complete the litigation of all issues in the District Court Action to final judgment, including final resolution of all appeals, if any. The modification of the automatic stay does not include the enforcement of any judgment in the District Court Action, for which further relief must be obtained from this court.

5. [14-91565-E-11](#) RICHARD SINCLAIR  
[15-9009](#)  
KATAKIS ET AL V. SINCLAIR

STATUS CONFERENCE RE: COMPLAINT  
2-23-15 [[1](#)]

**Tentative Ruling:** The Status Conference has been set to be conducted on April 30, 2015.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling.**

----- Plaintiff's Atty: Hilton A. Ryder  
Defendant's Atty: Pro Se

Adv. Filed: 2/23/15  
Answer: 3/30/15

Nature of Action:  
Dischargeability - false pretenses, false representation, actual fraud  
Dischargeability - fraud as fiduciary, embezzlement, larceny  
Dischargeability - willful and malicious injury

**The Status Conference is continued to 2:30 p.m. on June 11, 2015.**

Notes:

Request for Entry of Default by Plaintiffs filed 3/27/15 [Dckt 7]; Memorandum Re: Default Papers filed by the court 4/1/15 [Dckt 10]

## **SUMMARY OF COMPLAINT**

Andrew Katakis, California Equity Management Group, Inc., and Fox Hollow of Turlock Owners' Association ("Plaintiffs") seek a determination that a judgment against Richard Sinclair, the Defendant-Debtor, in the amount of \$1,337,073.72 is nondischargeable pursuant to 11 U.S.C. § 523(a)(2), (4), and (6). This judgment is alleged to have been obtained in Stanislaus County Superior Court case no. 332233.

## **SUMMARY OF ANSWER**

Richard Sinclair, the Defendant-Debtor, has filed an Answer which admits and denies specific allegations in the Complaint. The Defendant-Debtor also asserts twenty-three affirmative defenses.

## **MOTION FOR SUMMARY JUDGMENT**

On April 23, 2015, Plaintiffs filed a motion for summary judgment. The Motion states with particularity (Fed. R. Civ. P. 7(b) and Fed. R. Bank. P. 7007) the following grounds:

- A. The Motion is based on the Memorandum of Points and Authorities, Statement of Undisputed Facts, the Complaint, Request for Judicial Notice, all other unspecified pleadings and papers in the file, and any other evidence and authority that Plaintiff choose to present prior to or at the hearing.
- B. The Motion seeks to have the judgment in the State Court Action in the amount of \$1,337,073.72 determined nondischargeable pursuant to 11 U.S.C. § 523(a)(2), (4), and (6).
- C. Many of the wrongful acts (which are not stated with particularity in the summary judgment motion) fit within the elements of 11 U.S.C. § 523(a)(2)(A), (4) and (6).
- D. The alleged wrongful acts establish a pattern of fraud, misrepresentation and willful malicious acts that resulted in a finding of "unclean hands."

Motion, Dckt. 11.

## **FINAL BANKRUPTCY COURT JUDGMENT**

The Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334, and that this is a core proceeding pursuant to 28 U.S.C. § 157(b). Complaint ¶ Unnumbered, p. 11:11-13, Dckt. 1. In his answer, Richard Sinclair, the Defendant-Debtor, does not expressly admit or deny the allegations of jurisdiction and core matter proceeding in the unnumbered paragraph on page 11 of the Complaint. Federal Rule of Bankruptcy Procedure 7012(b) requires that a responsive pleading to a complaint shall admit or deny an allegation that it is a core or non-core proceeding. If non-core, the responsible pleading shall state whether the responding party consents to the issuances of final orders and judgment by the bankruptcy judge. Fed. R. Bankr. P. 7012(b). It appears that the pleading style in the

Complaint, placing the allegation of jurisdiction and core proceeding on page 41 in an unnumbered paragraph may have cause the inadvertent failure to admit or deny that allegation.

At the hearing, Defendant-Debtor stated on the record that the Complaint, as pleaded, is a **core/non-core** proceeding. To the extent that any issues in this Adversary Proceeding are "related to" matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.

The court shall issue a Status Conference Scheduling Order in substantially the following form:

a. The Plaintiff alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334, and that this is a core proceeding pursuant to 28 U.S.C. § 157(b). Complaint ¶ Unnumbered, p. 11:11-13, Dckt. 1. In his answer, Richard Sinclair, the Defendant-Debtor, does not expressly admit or deny the allegations of jurisdiction and core matter proceeding in the unnumbered paragraph on page 11 of the Complaint. Federal Rule of Bankruptcy Procedure 7012(b) requires that a responsive pleading to a complaint shall admit or deny an allegation that it is a core or non-core proceeding. If non-core, the responsible pleading shall state whether the responding party consents to the issuances of final orders and judgment by the bankruptcy judge. Fed. R. Bankr. P. 7012(b). It appears that the pleading style in the Complaint, placing the allegation of jurisdiction and core proceeding on page 41 in an unnumbered paragraph may have cause the inadvertent failure to admit or deny that allegation.

At the hearing, Defendant-Debtor stated on the record that the Complaint, as pleaded, is a **core/non-core** proceeding. To the extent that any issues in this Adversary Proceeding are "related to" matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.

b. The Status Conference is continued to 2:30 p.m. on June 11, 2015.

6. [15-90174-E-7](#) SABRINA AFIFI  
[15-9010](#)  
U.S. TRUSTEE V. AFIFI

STATUS CONFERENCE RE: COMPLAINT  
2-27-15 [[1](#)]

**Final Ruling: No appearance at the April 30, 2015 Status Conference is required.**

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Plaintiff's Atty: Allen C. Massey  
Defendant's Atty: unknown

Adv. Filed: 2/27/15  
Answer:

Nature of Action:  
Objection/revocation of discharge  
Injunctive relief - other

The default of the Defendant-Debtor having been entered and a motion for entry of default judgment having been filed, **the Status Conference is continued to 2:30 p.m. on August 20, 2015.**

Notes:

Entry of Default and Order Re: Default Judgment Procedures filed 4/8/15 [Dckt 12]

[UST-1] Motion for Default Judgment filed 4/13/15 [Dckt 16], set for hearing 6/11/15 at 10:30 a.m.

7. [13-91189-E-11](#) MICHAEL/JUDY HOUSE  
[14-9025](#)  
HOUSE ET AL V. AMARAL

PRE-TRIAL CONFERENCE RE:  
COMPLAINT FOR: 1) DECLARATORY  
RELIEF; 2) EASEMENT BY  
PRESCRIPTION; 3) PRESCRIPTIVE  
EASEMENT; 4) QUIET TITLE; 5)  
CONTEMPT FOR VIOLATION OF THE  
AUTOMATIC STAY; 6) INJUNCTIVE  
RELIEF  
8-8-14 [[1](#)]

Plaintiff's Atty: Robert M. Yaspan  
Defendant's Atty: Michael B. Ijams

Adv. Filed: 8/8/14  
Answer: 9/8/14

Nature of Action:  
Injunctive relief - imposition of stay  
Declaratory judgment



Notes:

Scheduling Order-  
Initial disclosures by 10/24/14  
Disclose experts by ~~1/7/15~~ 4/30/15  
Exchange expert reports by ~~1/21/15~~ 4/30/15  
Close of non-expert discovery 2/17/15  
Close of expert discovery 3/16/15  
Dispositive motions heard by 3/27/15

[RMY-2] Joint Ex Parte Application to Approve Request for Assignment to the Bankruptcy Dispute Resolution Program and Appointment of Mediator filed 11/19/14 [Dckt 21]; Order granting filed 11/24/14 [Dckt 24]

[RMY-3] Joint Ex Parte Application to Approve Stipulation to Extend Certain Dates of Scheduling Order filed 1/7/15 [Dckt 26]; Amended Order approving filed 1/7/15 [Dckt 30]

[RMY-4] Joint Ex Parte Application to Approve Stipulation to Extend Certain Dates of Scheduling Order filed 1/21/15 [Dckt 31]; Order Approving filed 1/22/15 [Dckt 34]

[RMY-5] Joint Ex Parte Application to Approve Stipulation to Extend Certain Dates of Scheduling Order filed 2/3/15 [Dckt 36]; Order Approving filed 2/6/15 [Dckt 39]

[RMY-6] Joint Ex Parte Application to Approve Stipulation to Extend Certain Dates of Scheduling Order filed 2/18/15 [Dckt 40]; Order Approving filed 2/19/15 [Dckt 43]

[RMY-7] Joint Ex Parte Application to Approve Stipulation to Extend Certain

Dates of Scheduling Order filed 3/11/15 [Dckt 44]; Order Approving filed 3/11/15 [Dckt 47]

[RMY-8] Joint Ex Parte Application to Approve Stipulation to Extend Certain Dates of Scheduling Order filed 3/25/15 [Dckt 48]; Order Approving filed 3/27/15 [Dckt 51]

[RMY-9] Joint Ex Parte Application to Approve Stipulation to Extend Certain Dates of Scheduling Order; Waive Pretrial Conference Requirements and Set New Dates at Pretrial Conference, if Necessary filed 4/15/15 [Dckt 52]; Order Approving filed 4/16/15 [Dckt 55]

#### **APRIL 30, 2015 PRETRIAL CONFERENCE**

On April 15, 2015, the parties filed their Stipulation and Motion to extend deadlines in this Adversary Proceeding. In the Stipulation and Motion the Parties represent to the court:

A. By this Sixth Stipulation to extend the deadlines, the parties continue to be "diligently attempting to resolve a dispute with regard to the final boundary lines pursuant to a proposed settlement."

B. "The Parties met at the subject property on April 15, 2015, and are still discussing the proposed boundary line."

C. "As such, the basis for the seventh request is that, even though the Parties have been diligently working on finalizing the terms of the Settlement Agreement, they still need additional time to resolve certain issues regarding provisions relating to the property lines."

Stipulation; Exhibit A, Dckt. 53.

A review of the court's docket on April 29, 2015, reveals that no further documents have been filed, no notice of settlement, and no motion to approve settlement. The Plaintiff-Debtors commenced their Chapter 11 case on June 25, 2013. Bankr. E.D. Cal. case no. 13-91189. No plan of reorganization has been confirmed in that case.

This Adversary Proceeding was filed on August 8, 2014. The court established a discovery schedule based on the Status Reports of the parties, with the Pre-Trial Conference originally scheduled for April 30, 2015. On January 7, 2015, the Parties filed the first in a series of motions to extend the deadlines in this Adversary Proceeding based on "active settlement negotiations."