

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Modesto, California

June 2, 2016 at 2:00 p.m.

1. [15-90811](#)-E-7 ASSN., GOLD STRIKE CONTINUED STATUS CONFERENCE RE:
[16-9002](#) HEIGHTS HOMEOWNERS COMPLAINT
FARRAR V. MASSELLA ET AL 1-13-16 [[1](#)]

Plaintiff's Atty: Clifford W. Stevens
Defendant's Atty: James L. Brunello

Adv. Filed: 1/13/16
Answer: 2/23/16 [Robinson Enterprises Profit Sharing Plan]
2/23/16 [Johnny Massella; Mary Massella]

Counterclaim Filed: 2/23/16 [Robinson Enterprises Profit Sharing Plan]
Answer: None
Counterclaim Dismissed 5/2/16

Counterclaim Filed: 2/23/16 [Johnny Massella; Mary Massella]
Answer: None
Counterclaim Dismissed 5/2/16

Nature of Action:
Validity, priority or extent of lien or other interest in property

The Status Conference is XXXXXXXXXXXXXXXXXXXXXXXXXXXX.

Notes:
Continued from 3/17/16 at the request of Plaintiff-Trustee. Parties to file a joint or separate status reports with proposed discovery, dispositive motion, and pretrial conference schedule on or before 5/19/16.

Plaintiff's Motion to Dismiss Defendants Johnny Massella's and Mary Massella's Counterclaim filed 3/18/16 [Dckt 18]; Order granting filed 5/2/16 [Dckt 44]

Plaintiff's Motion to Dismiss Robinson Enterprises Inc. Employee Profit Sharing Plan's Counterclaim filed 3/18/16 [Dckt 24]; Order granting filed 5/2/16 [Dckt 45]

JUNE 2, 2016 STATUS CONFERENCE

MARCH 17, 2016 STATUS CONFERENCE

The Plaintiff-Trustee filed a Status Conference Statement on March 14, 2016. Dckt. 13. He requests that the Status Conference be continued sixty-days to allow the Trustee to review the Counterclaims (filed February 23, 2016) and respond.

SUMMARY OF COMPLAINT

Gary Farrar, the Chapter 7 Trustee in the Gold Strike Heights Homeowners Association bankruptcy case, ("Plaintiff-Trustee") filed a complaint to avoid various liens filed by the Defendants. The Plaintiff-Trustee asserts that the liens may be avoided pursuant to 11 U.S.C. § 544 (hypothetical BFP status for Plaintiff-Trustee) based on the deeds of trust not have been properly recorded.

SUMMARY OF ANSWERS

Johnny Masella and Mary Masella, Trustees, and Robinson Enterprises, inc., Employee Profit sharing Plan ("Defendants") have filed an answer which admits and denies specific allegations in the Complaint. Dckts. 9, 11. The Answers assert nine affirmative defenses, including: the interests of the estate were obtained through wrongful foreclosures, the Debtor had constructive notice at the time of the foreclosure sales, the deeds of trust are subject to treatment as equitable deeds of trust, Defendants may seek to have defects in the deeds of trust corrected, and the nonjudicial foreclosure sales were void because Debtor's corporate powers were suspended at the time of the sales.

FINAL BANKRUPTCY COURT JUDGMENT

Gary Farrar, the Plaintiff-Trustee, alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b) (2) (A), (B), (K), and (O). Complaint 1, 2, 3, Dckt. 1.

In their respective answers, Robinson Enterprise, Inc Employee Profit Sharing Plan, and Johnny and Mary Massella, admit the allegations of jurisdiction and core proceedings. Answers 1, 2, and 3, Dckts. 9, 11. In their respective Counterclaims, the Defendants allege that jurisdiction exists for the Counterclaims pursuant to 28 U.S.C. § 157 and 1334, and that the matters therein are core pursuant to 28 U.S.C. § 157(b) (2) (F), (H), (K), and (N), and to the extent non-core, consent to the bankruptcy judge issuing all orders and the final judgments relating thereto. Counterclaims, 44 and 45, Dckts. 9 and 11.

ISSUANCE OF PRE-TRIAL SCHEDULING ORDER

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

- a. Gary Farrar, the Plaintiff-Trustee, alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b) (2) (A), (B), (K), and (O). Complaint 1, 2, 3, Dckt. 1. In their respective answers, Robinson Enterprise, Inc Employee Profit

Sharing Plan, and Johnny and Mary Massella, admit the allegations of jurisdiction and core proceedings. Answers 1, 2, and 3, Dckts. 9, 11. To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this is Adversary Proceeding are related to proceedings, 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 claims and issues in this Adversary Proceeding referred to the bankruptcy court.

- b. Initial Disclosures shall be made on or before -----, 2016.
- c. Expert Witnesses shall be disclosed on or before -----, 2016, and Expert Witness Reports, if any, shall be exchanged on or before -----, 2016.
- d. Discovery closes, including the hearing of all discovery motions, on -----, 2016.
- e. Dispositive Motions shall be heard before -----, 2016.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at ----- p.m. on -----, 2016.

2. [13-91315-E-7](#) [15-9052](#) APPLEGATE JOHNSTON, INC.
MCGRANAHAN V. LAGUNA GOLD
MORTGAGE, INC.

CONTINUED STATUS CONFERENCE RE:
COMPLAINT AND THIRD-PARTY COMPLAINT
1-14-16 [[44](#)]

Third-party Plaintiff's Atty: Daniel L. Egan
Third-party Plaintiff: Laguna Gold Mortgage, Inc.

Third-party Defendant's Atty: Patrick M. Keene
Third-party Defendant: Ahern Rentals, Inc.

Adv. Filed: 1/14/16 [Dckt 44]
Answer: none

The Status Conference is ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~.

Notes:
Continued from 4/7/16

JUNE 2, 2016 STATUS CONFERENCE

At the June 2, 2016 Status Conference, ~~XXXXXXXXXXXXXXXXXXXX~~.

SUMMARY OF COMPLAINT

In the Complaint the Plaintiff-Trustee alleges that the following transfers may be avoided as preferences pursuant to 11 U.S.C. § 547 and recovery pursuant to 11 U.S.C. § 550:

A. Bankruptcy case filed on July 16, 2013.

B. Payment of \$2,857.62 made to Defendant Laguna Gold Mortgage, Inc., dba LGM Construction on April 24, 2013.

SUMMARY OF ANSWER

Defendant Laguna Gold Mortgage, Inc., dba LGM Construction, filed its Answer on January 14, 2016. Dckt. 43. Defendant admits and denies specific allegations in the Complaint. Defendant also asserts fourteen affirmative defenses.

SUMMARY OF THIRD-PARTY COMPLAINT

Defendant Laguna Gold Mortgage, Inc. has filed a Third Party Complaint, naming Ahern Rentals, Inc. as the defendant. Dckt. 44. Defendant Laguna Gold Mortgage, Inc. asserts that it is entitled to indemnification from Laguna Gold Mortgage, Inc. for any monies it may be required to pay the Plaintiff-Trustee in this Adversary Proceeding.

A Certificate of Service was filed by Laguna Gold Mortgage, Inc. attesting to the Answer and Third Party Complaint having been served on counsel for the Plaintiff-Trustee. No proof of service has been filed attesting to the Third-Party Complaint having been served on Ahern Rentals, Inc.

SUMMARY OF ANSWER TO THIRD-PARTY COMPLAINT

No Answer has been filed to the Third-Party Complaint.

FINAL BANKRUPTCY COURT JUDGMENT

The Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (E), and (O). Complaint 3, 4, Dckt. 1. In its First Amended Answer, Laguna Gold Mortgage, Inc. Admits the allegations of jurisdiction and core proceedings. Answer 3, 4, Dckt. 43.

ISSUANCE OF PRE-TRIAL SCHEDULING ORDER

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

- a. The Plaintiff alleges that jurisdiction exists for this Adversary Proceeding pursuant to 28 U.S.C. § 1334 and 157, and the referral to this bankruptcy court from the United States District Court for the Eastern District of California. Further, that this is a core proceeding before this bankruptcy court pursuant to 28 U.S.C. § 157(b)(2)(A), (N), and (O). **First Amended Complaint, ¶¶ X, X, Dckt. X.** The Defendant admits the jurisdiction and that this is a core proceeding. Answer, **¶¶ X, X, Dckt. X.** To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this is Adversary Proceeding are **related to proceedings, 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 claims and issues in this Adversary Proceeding referred to the bankruptcy court.**
- b. Initial Disclosures shall be made on or before **-----, 2016.**
- c. Expert Witnesses shall be disclosed on or before **-----, 2016,** and Expert Witness Reports, if any, shall be exchanged on or before **-----, 2016.**
- d. Discovery closes, including the hearing of all discovery motions, on **-----, 2016.**
- e. Dispositive Motions shall be heard before **-----, 2016.**
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at **----- p.m. on -----, 2016.**

3. [13-91315-E-7](#) APPLEGATE JOHNSTON, INC. CONTINUED STATUS CONFERENCE RE:
[15-9052](#) COMPLAINT
MCGRANAHAN V. LAGUNA GOLD 7-15-15 [[1](#)]
MORTGAGE, INC.

The Status Conference on the Complaint and Third-Party Complaint are held as one Status Conference, Item 2 on the court's June 2, 2016, 2:00 p.m. Status Conference Calendar.

4. [14-91023-E-11](#) JOSEPH TEDESCO CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
7-16-14 [[1](#)]

Debtor's Atty: David C. Johnston

The Status Conference is **XXXXXXXXXXXXXXXXXXXXXXXXXXXXX**.

Notes:

Continued from 5/12/16

JUNE 2, 2016 STATUS CONFERENCE

MAY 12, 2016 STATUS CONFERENCE

On March 21, 2016, the court issued an Order to Show Cause why this bankruptcy case should not be administratively closed. The Chapter 11 Plan was confirmed in this case on December 13, 2015. Order, Dckt. 139. Counsel for the former Debtor in Possession has not yet file a motion for approval of professional fees. Civil Minutes, Dckt. 147. Responses to the Order to Show Cause were to be filed and served on or before April 28, 2016. Nothing has been filed by the Plan Administrator/Debtor.

Counsel for the Plan Administrator appeared, stated that the Plan Administrator/Debtor agrees that the case may be administratively closed. Counsel for the Plan Administrator will file an ex parte motion to administratively close the case.

5. [14-91231](#)-E-7 MALUK/RANJIT DHAMI
[15-9065](#)
FARRAR V. DHAMI

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
12-3-15 [[1](#)]

Final Ruling: No appearance at the June 2, 2016 Status Conference is required.

Plaintiff's Atty: Aaron A. Avery
Defendant's Atty: Armando S. Mendez; Brandy L. Brown

Adv. Filed: 12/3/15
Answer: 1/19/16

Nature of Action:
Recovery of money/property - preference

The Status Conference is continued to 2:00 p.m. on August 4, 2016.

Notes:
Continued from 3/17/16 to afford the Parties time to obtain approval of the settlement.

JUNE 2, 2016 STATUS CONFERENCE

On May 17, 2016, the court entered its order approving the settlement of the claims in this Adversary Proceeding. In re Dhami, 14-91231, Dckt. 80. Payment of the settlement amount by Defendant is required to be made within sixty days of the entry of the order approving the settlement. *Id.*, Settlement Agreement, Exhibit A, Dckt. 76.

6. [16-90139-E-7](#) AJAVA SYSTEMS, INC.

STATUS CONFERENCE RE:
INVOLUNTARY PETITION
2-8-16 [[1](#)]

Final Ruling: No appearance at the June 2, 2016 Status Conference is required.

Debtor's Atty: David C. Johnston

The case having been converted to one under Chapter 7, **the Chapter 11 Status Conference is removed from the calendar.**

Notes:

[CDH-2] Motion for Appointment of Trustee filed 2/11/16 [Dckt 7]; resolved by stipulation filed 2/24/16 [Dckt 26]; Order approving stipulation and vacating hearing filed 2/25/16 [Dckt 28]

[CDH-3] Ex Parte Motion to Transfer Case from Sacramento Division to Modesto Division filed 2/11/16 [Dckt 4]; Order transferring case filed 2/16/16 [Dckt 17]

Debtor's Consent to Order for Relief Under Chapter 7 filed 3/2/16 [Dckt 32]

Order for Relief Under Chapter 7 of the Bankruptcy Code filed March 7, 2016 [Dckt. 38]

7. [16-90363-E-11](#) ERNEST ALTMANN

STATUS CONFERENCE RE: STATUS
CONFERENCE
4-27-16 [[1](#)]

Debtor's Atty: Pro Se

The Chapter 11 Status Conference is ~~XXXXXXXXXXXXXXXXXXXX~~.

Notes:

[LCR-1] Motion by Secured Creditor, Rushmore Loan Management Services LLC for Dismissal of the Chapter 11 Case or in the Alternative Relief from the Automatic Stay re Real Property Located at 15923 Sonora Road, Knights Ferry, CA filed 5/3/16 [Dckt 13]

[LCR-1] Ex Parte Application for Order Shortening Time filed 5/3/16 [Dckt 17]; Order denied 5/5/16 [Dckt 20]

Debtor's Notice to Put Foreclosure on Hold filed 5/6/16 [Dckt 23]

[LCR-2] Amended Motion by Secured Creditor, Rushmore Loan Management Services LLC for Relief from the Automatic Stay re Real Property Located at 15923 Sonora Road, Knights Ferry, CA filed 5/9/16 [Dckt 25]; set for hearing 6/2/16 at 10:00 a.m.

[LCR-3] Motion by Secured Creditor, Rushmore Loan Management Services LLC for Dismissal of the Chapter 11 Case filed 5/9/16 [Dckt 30], set for hearing 6/2/16 at 10:00 a.m.

Debtor's Motion to Extend Stay and Produce Documents filed 5/9/16 [Dckt 34]; court set for hearing on 6/2/16 at 10:00 a.m. [Dckt 38]

Debtor's Notice of Automatic Stay filed 5/9/16 [Dckt 35]

Debtor's Motion to Postpone all Hearings filed 5/13/16 [Dckt 39]; Memorandum Decision and Order Denying Ex Parte Motion to Stay All Hearings filed 5/16/16 [Dckt 42]

Debtor's Motion to Dismiss Foreclosure filed 5/16/16 [Dckt 44]; Order Setting Hearing and Recasting as Opposition to Motion for Relief filed 5/18/16 [Dckt 45]

Debtor's Motion to Clarify Property Owner of Home and Property Size Parcels of 1 and 2 for 15923 Sonora Rd., Knight Ferry, CA filed 5/24/16 [Dckt 49]; Order re motion filed 5/26/16 [Dckt 51]

Debtor's Follow Up With Status Report-Update filed 5/26/16 [Dckt 50]

JUNE 2, 2016 STATUS CONFERENCE

The court has chronicled the flurry of law and motion activity in this case in several recent rulings. In the Order setting hearing on the ex parte motion filed by Ernest Altmann, the Debtor ("Debtor") and now serving as the Debtor in Possession, ("ΔIP"), the court noted the prior bankruptcy cases filed by the Debtor, stating:

"On April 27, 2016, Ernest Altmann, the Debtor in Possession,

commenced this Chapter 11 bankruptcy case. He previously commenced a Chapter 13 case on December 24, 2015. Bankr. E.D. Cal. 15-91221. That case was dismissed on March 30, 2016. The Chapter 13 Trustee filed a Motion to Dismiss the Chapter 13 case. *Id.*, Dckt. 30. The form Motion to Dismiss states the Trustee's conclusions that: (1) there is unreasonable delay, (2) there is some unstated amount of default in plan payments, (3) the Chapter 13 Plan is "incomprehensible," fails to list any creditors to be paid or percentage to creditors holding general unsecured claims, and (4) Debtor has failed to provide the Trustee with copies of his tax returns. *Id.*

Debtor filed another bankruptcy case in 2011, a Chapter 7 case in which he was granted a discharge. Bankr. E.D. Cal. 11-9238 1."

Order for Hearing on Motion titled "(1) Motion for Automatic Stay until Chapter 11 Complete 26 (2) Motion to Produce Requested Up to Date Documents, Section 2605(e) of Title 12 of U.S. Code." Dckt. 34.

The ΔIP filed a second ex parte motion, titled "(1) Motion for Automatic Stay until Chapter 11 Complete (2) Motion to Produce Requested Up to Date Documents, Section 2605(e) of Title 12 of U.S. Code." Dckt. 39. In substance, the second ex parte motion requested that the court stay all proceedings in the Chapter 11 case until Rushmore Management Services, LLC provides the documents to the satisfaction of the ΔIP. The court issued a Memorandum Opinion and Decision stating the ruling on this second ex parte motion. Dckt. 42. The court concluded:

"The ΔIP has not provided the court with grounds by which the court should suspend all 25 hearings in this bankruptcy case until some later, unspecified date. It appears that the request has been made to keep in place the automatic stay for an indefinite time while Creative Building, Inc. [an entity 100% owned by the Debtor which is now property of the bankruptcy estate] pursues its rights that ΔIP assert exist."

Id., p. 4:24-27. In reaching this Ruling on the second ex parte motion, the court observed the following with respect to this Chapter 11 case:

"What is also evident is that this dispute with Rushmore and others has little, if anything, to do with the prosecution of a Chapter 11 bankruptcy case and plan. The discussion in the two ex parte motions sound in the nature of a dispute in which a borrower contends that a note and deed of trust have been, or were rendered, void by certain events and actions. Therefore, there is no obligation secured by the property at issue and the debtor owns the property free and clear of any liens or obligation to pay the asserted debt.

On the Statement of Financial Affairs, the Debtor lists there being a pending appeal before the Ninth Circuit Court of Appeals for an action titled '*Altmann vs. Rushmore, Wells Fargo, Trustee Corp.*' Statement of Financial Affairs Question 9, Dckt. 1 at 46. The case number 16-15595 is

listed for this appeal.”

Id., p. 3:4-13.

The ΔIP filed a third pleading titled “motion,” which the court which the court determined was not a motion, but an attempt to collaterally clarify statements made in the Schedules concerning the rights and interest of the Debtor, which are not rights and interests of the estate. Order, Dckt. 51.

Chapter 11 Case as Framed by the ΔIP

In his Status Report filed in May 26, 2016 (Dckt. 50), the ΔIP states that he is waiting on Rushmore to provide the “missing documents” before he can determine how a plan would proceed and the value of assets. Further, that he believes the debts, if any, owed to Rushmore are unsecured based on having obtained a discharge in the 2011 Chapter 7 case and correspondence from Rushmore.

In his documents, the ΔIP repeats an assertion that the documents relied upon by Rushmore are forged and that he is seeking to have that determined through the motions he is filing in this bankruptcy case.

Review of Schedules

The court has discussed the Schedules and Statement of Financial Affairs filed by the Debtor in this case in the court’s prior rulings. Some significant points include:

A. Schedule A lists the Debtor owning the land for the Knights Ferry Property and that CBI (the corporation he owns and is part of the bankruptcy estate) owns the house. Dckt. 1 at 11.

B. Debtor lists owning two corporations, BSC Consulting, Inc., with Debtor having 100% ownership and a value of \$1,000.00, and Creative Builders, Inc. (which appears to be the “CBI” asserted to be the owner of the home on the Knights Ferry Property), with Debtor having 100% ownership and a value of \$5,000.00. (This value appears inconsistent with the asserting that CBI owns a house on the Property.) *Id.* at 15.

C. On Schedule B Debtor lists having claims against third-parties totaling \$2,875,895.82 (which includes a judgment for \$875,895.82 against Justin Clark). *Id.* at 18.

D. No creditors are listed on Schedule D. *Id.* at 23-25.

E. No priority unsecured claims are listed on Schedule E. *Id.* at 26-27.

F. Rushmore is listed as having an unsecured claim, disputed, in the amount of \$1,376,820.00, which was discharged in the Chapter 7 case. *Id.* at 28. The total general unsecured claims are stated to be \$1,397,241 – all of which are disputed as having been discharged in the Chapter 7 case.

G. On Schedule J, Debtor *Id.* at 38-39, lists a total of \$2,653.00 in

expenses, which include:

1. \$1,250.00 for rent or mortgage (with Debtor stating that he has no mortgage payment and no rental property is listed on Schedule G);
2. \$0.00 for property insurance;
3. \$0.00 for property taxes;
4. \$0.00 for home maintenance;
5. \$150.00 for electricity and heat;
6. \$0.00 for water, sewer, garbage;
7. \$125.00 for telephone, cable;
8. \$250.00 for food and housekeeping supplies;
9. \$120.00 for clothing and laundry;
10. \$0.00 for personal care products;
11. \$25.00 for medical and dental expenses;
12. \$250.00 for transportation;
13. \$195.00 for entertainment;
14. \$143.00 for vehicle insurance; and
15. \$145.00 for income taxes.

On the Statement of Financial Affairs Debtor includes the following information:

A. Debtor has no employment or business income in 2016, 2015, or 2014. Statement of Financial Affairs Question 4, *Id.* at 43.

B. Debtor reports having Social Security income (averaging \$2,177 a month) in 2016, and both Social Security income and consulting income in 2015 and 2016 (with exactly the same amounts for Social Security income (\$2,177 a month average) and the consulting income (\$498 a month average) stated for 2015 and 2014). Question 5, *Id.*

C. Debtor lists two legal proceedings in response to Question 9 on the Statement of Financial Affairs: (1) *Altmann v. Rushmore et al* (on appeal to the Ninth Circuit Court of Appeals), and (2) *Altmann v. Stelma* (Stanislaus Superior Court). *Id.* at 46.

In the first ex parte motion filed by the DIP, a copy of a title summary (not a title report) is shown for the Knights Ferry Property which identifies "Creative Builders, Inc." as the owner of the property (not just the house), with a hand written interlineation of "Ernest Altmann 'not' on Title."

Ex Parte Motion, Dckt. 34 at 2.

Also attached to the first ex parte motion is what appears to be the letter from Rushmore saying that the debt was discharged and is not secured. *Id.* at 7. This letter makes reference to a prior correspondence, stating that it was sent in error, and stating "It was not meant to be an attempt to collect a debt that has been discharged through bankruptcy." The letter is dated March 18, 2015.

Motions by Rushmore Loan Management Services, LLC

Motion for Relief From Stay

An Amended Motion for Relief From the automatic stay was filed by Rushmore on May 9, 2016. Dckt. 25. Rushmore characterizes the current Chapter 11 case as another "chapter" in a protracted, extensively litigated two-party dispute over the Debtor's only remaining significant asset - the Knights Ferry Property. Rushmore alleges that based on an asserted default on the obligation secured by that Property, foreclosure proceedings were commenced in 2008. (It appears that the default was cured, as reference is made in the motion to a subsequent default.)

In 2011, Debtor filed a Chapter 7 bankruptcy case (Bankr. E.D. Cal. No. 11-92381). In 2011, based on another asserted default, a second foreclosure proceeding was commenced. Debtor then commenced the litigation in the District Court, which has subsequently been dismissed.

Rushmore alleges that in October 2012, a loan modification agreement was entered into between Rushmore and the Debtor. Based on an asserted default under the loan modification agreement, a notice of default for the deed of trust was recorded on April 8, 2015. After recording the notice of default, Debtor filed a second suit in the District Court. Rushmore asserts that this second action was dismissed, and sanctions were ordered pursuant to Federal Rule of Civil Procedure 11 to be paid to Rushmore.

Rushmore then set the foreclosure sale date for December 28, 2015. Debtor commenced a Chapter 13 case on December 24, 2015. Bankr. E.D. Cal. 15-92112. That bankruptcy case was dismissed on March 30, 2016.

Rushmore asserts that it then reset the foreclosure sale for April 29, 2016, and on April 27, 2016, Debtor commenced the current Chapter 11 case.

Rushmore asserts that it is entitled to relief from the automatic stay first for cause pursuant to 11 U.S.C. § 362(d)(1). This is based on the three bankruptcy cases having been filed by Debtor to thwart the foreclosure sales.

Second, because of the filing of the three bankruptcy cases, Rushmore asserts that it is entitled to relief pursuant to 11 U.S.C. § 362(d)(4).

Finally, Rushmore asserts that relief from the automatic stay should be granted pursuant to 11 U.S.C. § 362(d)(2) because there is no equity in the Property for the Debtor or Estate. Additionally, Debtor reports that his income is less than \$3,000.00 a month, and Rushmore asserts that the monthly payments on the note secured by the Property are \$8,789.83.

Motion to Dismiss

Rushmore has also filed a motion to dismiss the bankruptcy case. Dckt. 30. The grounds stated in the motion for relief are: (1) Debtor failed to make timely payments under the proposed plan in the prior Chapter 13 case and (2) Debtor failed to provide the Chapter 13 Trustee with copies of tax returns in the prior case. Therefore, Rushmore asserts that Debtor is ineligible to commence the current bankruptcy case as provided in 11 U.S.C. § 109(g), asserting that the two identified failures constitute "willful failure of the debtor to abide by orders of the court...."

8. [14-91565-E-7](#) RICHARD SINCLAIR
[16-9008](#)

STATUS CONFERENCE RE: COMPLAINT
3-23-16 [[1](#)]

CALIFORNIA EQUITY MANAGEMENT
GROUP, INC. ET AL V. SINCLAIR

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

Adv. Filed: 3/23/16
Answer: 5/9/16

Nature of Action:
Objection/revocation of discharge

The Status Conference is **XXXXXXXXXXXXXXXXXXXXXXXXXXXX**.

Notes:

JUNE 2, 2016 STATUS CONFERENCE

At the Status Conference **XXXXXXXXXXXXXXXXXXXX**.

SUMMARY OF COMPLAINT

California Equity Management Group, Inc.; Fox Hollow of Turlock Owners' Association, and Andrew Katakis ("Plaintiff") assert claims to have Richard Sinclair ("Defendant-Debtor") denied his discharge in his Chapter 7 bankruptcy case (14-91565). The grounds for denial of discharge alleged are summarized (and are not a complete listing of the extensive allegations) as follows:

- a. 11 U.S.C. § 727(a)(2) - with intent to hinder, delay or defraud a creditor or officer of the estate, Defendant-Debtor has, or permitted, transferred, removed, destroyed, mutilated, or concealed:
 - i. Within one year before the commencement of the case property of the Defendant-Debtor; or
 - ii. After the case, property of the bankruptcy estate.
- b. 11 U.S.C. § 727(a)(4)(A) - that Defendant-Debtor knowingly and fraudulently made a false oath
 - i. Failing to disclose:
 - (1) Transfers made to family members;
 - (2) Debtor's interest in the Oak View Drive Property and Black Hawk Drive Property;
 - (3) Unrecorded deed for 50% interest in the Oak View Drive Property;

- ii. Falsely stating:
 - (1) He has a multi-year lease of the Oak View Drive Property;
 - (2) That he had recorded a homestead exemption in the Oak View Drive Property;
 - (3) That he suffers, or suffered, from a medical impairment in connection with fulfilling his duties and obligations in this bankruptcy case;
 - (4) The grounds surrounding the Defendant-Debtor's post-petition automobile accident;

c. 11 U.S.C. § 727(a)(4)(D) and (a)(6) - that Defendant-Debtor has refused to obey the orders of the court in this bankruptcy case, including:

- i. Failure to produce documents on February 24, 2016;
- ii. Failure to appear at the First Meeting of Creditors following conversion of this case;
- iii. Failure to search for or produce documents for a May 22, 2015 Rule 2004 examination;

d. 11 U.S.C. § 727(a)(3) - Defendant-Debtor has failed to keep, preserve, or produce records of the various, multi-million dollar business transactions, including:

- i. \$1,200,000 of accounts receivable allegedly transferred;
- ii. Transactions involving Sinclair Ranch;

SUMMARY OF ANSWER

Richard Sinclair ("Defendant-Debtor") filed his Answer on May 9, 2016. Dckt. 7. The Answer admits and denies the specific paragraphs of the Complaint. Defendant-Debtor asserts twenty-four Affirmative Defenses.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff alleges that jurisdiction exists for this Adversary Proceeding pursuant to 28 U.S.C. § 1334 and 157, and the referral to this bankruptcy court from the United States District Court for the Eastern District of California. Further, that this is a core proceeding before this bankruptcy court pursuant to 28 U.S.C. § 157(b)(2)(J). Complaint, ¶¶ 2, 3, Dckt. 1. The Defendant-Debtor admits that is Adversary Proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(J). Answer, ¶ 2, Dckt. 7. To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued 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.

ISSUANCE OF PRE-TRIAL SCHEDULING ORDER

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

e. The Plaintiff alleges that jurisdiction exists for this Adversary Proceeding pursuant to 28 U.S.C. § 1334 and 157, and the referral to this bankruptcy court from the United States District Court for the Eastern District of California. Further, that this is a core proceeding before this bankruptcy court pursuant to 28 U.S.C. § 157(b)(2)(J). Complaint, ¶¶ 2, 3, Dckt. 1. The Defendant-Debtor admits that is Adversary Proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(J). Answer, ¶ 2, Dckt. 7. To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this is Adversary Proceeding are related to proceedings, 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 claims and issues in this Adversary Proceeding referred to the bankruptcy court.

f. Initial Disclosures shall be made on or before -----, 2016.

g. Expert Witnesses shall be disclosed on or before -----, 2016, and Expert Witness Reports, if any, shall be exchanged on or before -----, 2016.

h. Discovery closes, including the hearing of all discovery motions, on -----, 2016.

i. Dispositive Motions shall be heard before -----, 2016.

j. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at ----- p.m. on -----, 2016.

9. [09-94269-E-7](#) SUSHIL/SUSEA PRASAD
[15-9018](#)
FERLMANN V. PRASAD ET AL

CONTINUED STATUS CONFERENCE RE:
AMENDED COMPLAINT
10-2-15 [[44](#)]

Plaintiff's Atty: Matthew J. Olson; Roxanne Bahadurji; Iain A. MacDonald
Defendant's Atty:
William A. Munoz; Kristin L. Iversen [Meyer Wilson Co., LPA]
Steve Altman [Sushil Prasad; Susea S. Prasad]
Holly Estioko; Jason S. Haselkorn [Transamerica Financial Advisors, Inc.]

Adv. Filed: 5/29/15 [Trustee]
Answer: none

First Amd. Cmpl. Filed: 6/19/15 [Trustee]
Answer: 7/31/15 [Meyer Wilson Co., LPA]
Counterclaim Filed: 7/31/15 [Meyer Wilson Co., LPA]
Answer: 8/21/15 [Trustee]

Second Amd. Cmpl. Filed: 10/2/15 [Trustee]
Answer: 10/22/15 [Transamerica Financial Advisors]
10/22/15 [Sushil Prasad and Susea Prasad]
10/22/15 [Meyer Wilson Co., LPA]
11/12/15 [First Amd. Answer - Transamerica Financial Advisors]

Crossclaim Filed: 10/22/15 [Meyer Wilson Co., LPA]
Answer to Meyer Wilson Co., LPA's Crossclaim:
11/9/15 [Trustee]

Crossclaim Filed: 10/22/15 [Transamerica Financial Advisors]
Amended Crossclaim Filed: 11/12/15 [Transamerica Financial Advisors]
Answer to Transamerica Financial Advisors' Crossclaim:
12/8/15 [Sushil Prasad and Susea Prasad]

Crossclaim Filed: 12/8/15 [Sushil Prasad and Susea Prasad]
Answer to Sushil Prasad and Susea Prasad's Crossclaim:
12/22/15 [Meyer Wilson Co., LPA]

Nature of Action:
Recovery of money/property - other
Other (e.g. other actions that would have been brought in state court if
unrelated to bankruptcy case)

The Status Conference is XXXXXXXXXXXXXXXXXXXXXXXXXXXX.

Notes:

Continued from 4/7/16, at which time the court shall set a discovery schedule
and pre-trial conference.

[MPB-2] Ex Parte Motion for Order Approving Stipulation [Stipulated Protective
Order] filed 4/15/16 [Dckt 131]; Order approving filed 4/20/16 [Dckt 134]

[MF-2] Declaration of Iain A. MacDonald Re Attorneys' Fees Incurred in
Connection with Motion to Compel filed 4/22/16 [Dckt 135]; Supplemental
Declaration filed 5/26/16 [Dckt 139]

[MF-2] Declaration of Kristin L. Iversen re Plaintiff's Request for Attorney's

Fees in Connection with Motion to Compel filed 5/6/16 [Dckt 137]

Joint Status Conference Statement filed 5/26/16 [Dckt 142]

JUNE 2, 2016 STATUS CONFERENCE

The Parties filed a Joint Status Report on May 26, 2016. Dckt. 142. The Parties report and recommend the following:

A. Plaintiff-Trustee advises that he intends to seek to amend the Second Amended Complaint to recover \$276,000.00, asserting that such amount is the value of the claim, which the Plaintiff-Trustee asserts was settled for \$105,000 without the Plaintiff-Trustee's knowledge or consent.

B. The court has approved the settlement between the Plaintiff-Trustee and Defendant-Debtors, which resolves all of the Plaintiff-Trustee's claims against the Defendant-Debtors.

C. The Parties have not resolved the pending discovery disputes between the Plaintiff-Trustee and Defendant Meyer Wilson.

1. Defendant-Meyer Wilson asserts that the discovery issues have been unnecessarily extended in time and cost due to Plaintiff-Trustee. Meyer Wilson asserts that all documents have been produced.

D. Plaintiff-Trustee reports that discovery has been received from Defendant-Transamerica, but asserts that this Defendant has failed to provide correspondence and documents concerning the FINRA arbitration claim on a grounds of "mediation privilege." The Plaintiff-Trustee asserts that, as the owner of the claim at issue, the mediation privilege does not apply against the Plaintiff-Trustee in obtaining information concerning its claim and the purported compromise of that claim.

1. Defendant-Transamerica asserts its contention that the remaining documents are privileged (for which a privilege log was provided). Defendant-Transamerica states that all parties, except the Plaintiff-Trustee agreed to have the court's protective order previously issued, be extended to cover the production of the asserted mediation privilege documents.

MOTION TO WITHDRAW REFERENCE - CORE PROCEEDING DETERMINATION

On October 22, 2015, Defendant Attorneys filed a motion with the District Court to withdraw the reference of this Adversary Proceeding to this bankruptcy court. Motion, Dckt. 58. On February 4, 2016, the District Court entered an order denying the Motion to Withdraw the Reference. Dckt. 90 ("ED Cal Order"). The ruling of the District Court, E.D. Cal. 15-cv-2229, is summarized as follows:

A. "The case [Adversary Proceeding] involves issues concerning whether the settlement proceeds are part of the bankruptcy estate and whether Meyer Wilson committed malpractice in representing the Debtors and misappropriating the proceeds." ED Cal Ord, p. 6:10-13.

B. "Whether the proceeds were part of the bankruptcy estate hinges on when the underlying claims accrued. Claim accrual, in turn, is governed by state law and bankruptcy law - not other federal laws. *In re Goldstein*, 526 B.R. 13, 21 (9th Cir. B.A.P. 2015) Malpractice too is a state - not federal -question. *Ross v. Yaspan*, 2013 WL 3448725, at *4 (C.D. Cal. July 9, 2013)." *Id.*, p. 6:14-19.

C. "Meyer Wilson has not shown that the rule in *Howsam* will arise in this case. Even if it did, there is no indication that the answer would involve more than "routine application" of the relevant law. The Court therefore holds that mandatory withdrawal is not warranted." *Id.*, p. 7:19-23.

D. "The parties appear to agree that Meyer Wilson is entitled to a jury trial before the district court as to the malpractice claim. Mot. at 6-7; Trustee's Opp. at 6." *Id.*, p. 6:25-27.

E. "The Ninth Circuit has held that the right to a jury trial does not warrant transfer of all pre-trial proceedings to the district court. See *In re Healthcentral.com*, 504 F.3d 775, 787 (9th Cir. 2007) . The procedure by which the bankruptcy court handles pretrial matters and the district court conducts a trial is a well-worn procedure in this district." *Id.*, p. 8:3-8.

F. "Most of the claims in this case appear to be core bankruptcy matters, because they "could arise only in the context of a bankruptcy case." See *Battle Ground Plaza, LLC v. Ray*, . 624 F.3d 1124, 1131 (9th Cir. 2010) (citation omitted) . Indeed, the thrust of the case is whether the settlement proceeds are assets of the bankruptcy estate. *Id.*; p. 8:26-28, 9:1-4.

G. "To the extent there are other non-core matters, this Court follows the procedure set out by 28 U.S.C. § 157, whereby the bankruptcy court first considers the claims using its expertise in bankruptcy law and knowledge facts of the case and then "submit[s] proposed findings of fact and conclusions of law to the district court[.]" 28 U.S.C. § 157(c) (1)." *Id.*, p. 9:4-9.

H. "The Court therefore finds it preferable for the bankruptcy court to continue handling pretrial matters. In the event that this case reaches trial, the issues of fact and law will be significantly narrowed and this Court will be well-equipped to oversee the case at that time."

Identification of Core Matters

The complexity of identifying core and non-core matters is increase by there being several Counterclaims and Cross-Claims. The court's review of the claims yields the following initial identification of core and non-core matters in this Adversary Proceeding:

SECOND AMENDED COMPLAINT (DCKT. 44)	
CORE or CONSENT	NON-CORE No Consent

<p>1. Determination if Claims Are Property of Estate.</p> <p>a. Core matter arising under the Bankruptcy Code, 11 U.S.C. § 541.</p> <p>2. Claim to Avoid Transfer - 11 U.S.C. § 549 - Debtors.</p> <p>a. Core matter arising under the Bankruptcy Code, 11 U.S.C. § 549.</p> <p>3. Claim to Avoid Transfer - 11 U.S.C. § 549 - Defendant Attorney.</p> <p>a. Core matter arising under the Bankruptcy Code, 11 U.S.C. § 549.</p>	<p>1. Claim For Professional Liability Damages - Defendant Attorney.</p> <p>a. Non-Core matter arising under State law for issues which remain after bankruptcy judge completes the core matter proceedings.</p>
<p>cont.</p> <p>4. Claim to Avoid Transfer - 11 U.S.C. § 549 - TAFI.</p> <p>a. Core matter arising under the Bankruptcy Code, 11 U.S.C. § 549.</p> <p>5. Claim For Violation of Automatic Stay - All Defendant.</p> <p>a. Core matter arising under the Bankruptcy Code, 11 U.S.C. §§ 362 and 105(a), and the inherent power of the bankruptcy court.</p> <p>6. Claim For Turnover and Accounting - 11 U.S.C. § 542 - Debtors.</p> <p>a. Core matter arising under the Bankruptcy Code, 11 U.S.C. § 542.</p>	
<p>DEFENDANT ATTORNEYS' COUNTERCLAIM (DCKT. 56)</p>	

CORE or CONSENT	NON-CORE No Consent
<p>1. Claim for determination of Bankruptcy Estate's Interest (if any) in the Arbitration Claim and rights relating thereto.</p> <p>a. Core matter arising under the Bankruptcy Code, 11 U.S.C. § 541.</p>	
TAFI CROSS-CLAIMS (Dckt. 70)	
CORE or CONSENT	NON-CORE No Consent
<p>1. Contractual Indemnification - Debtors.</p> <p>a. Core matter arising in the bankruptcy case directly related to the core proceedings for determination of core matters and acceptance of Settlement for Bankruptcy Estate in the Second Amended Complaint.</p> <p>b. Parties to TAFI Cross-Claims have consented to bankruptcy judge issuing all final orders and judgment.</p> <p>2. Intentional and Negligent Misrepresentation - Cal. Civ. §§ 1709 and 1710 - Debtors</p> <p>a. Parties to TAFI Cross-Claims have consented to bankruptcy judge issuing all final orders and judgment.</p>	None

cont.

3. Equitable Indemnification and/or Contribution - Debtors

a. Core matter arising in the bankruptcy case directly related to the core proceedings for determination of core matters and acceptance of Settlement for Bankruptcy Estate in the Second Amended Complaint.

b. Parties to TAFI Cross-Claims have consented to bankruptcy judge issuing all final orders and judgment.

4. Restitution or Unjust Enrichment - Debtors

a. Core matter arising in the bankruptcy case directly related to the core proceedings for determination of core matters, assets of Bankruptcy Estate received by Debtors, and acceptance of Settlement for Bankruptcy Estate in the Second Amended Complaint.

b. Parties to TAFI Cross-Claims have consented to bankruptcy judge issuing all final orders and judgment.

DEBTORS' CROSS-CLAIM (DCKT. 72)	
CORE or CONSENT	NON-CORE No Consent
<p>1. Equitable Indemnification and/or Contribution - Defendant Attorneys</p> <p style="padding-left: 40px;">a. Core matter arising in the bankruptcy case directly related to the core proceedings for determination of core matters and acceptance of Settlement for Bankruptcy Estate in the Second Amended Complaint.</p>	<p>1. Claim for Professional Liability - Defendant Attorneys</p> <p style="padding-left: 40px;">a. No consent by Cross-Claim Defendant Attorneys.</p>

FEBRUARY 25, 2016 STATUS CONFERENCE

The Status Conference is continued to June 2, 2016, at 2:00 p.m., at which time the court shall set a discovery schedule and pre-trial conference. On or before May 26, 2016, the parties shall file a joint, or individual status conference reports suggesting the discovery, expert witness, and dispositive motion deadlines.

FEBRUARY 25, 2016 STATUS CONFERENCE

At the Status Conference the court addressed with the Parties the identification of core and non-core matters in this Adversary Proceeding. The attorneys Plaintiff-Trustee and Meyers Wilson) are continuing to meet and confer to address the issues in this case in light of the District Court's denial of the Motion to Withdraw the Reference.

The parties concur that all issues in the Complaint, Crossclaim, and Counterclaim are core, except for the malpractice claims.

The Parties will meet and confer concerning the outstanding discovery, the use of BDRP, and other matters concerning the procedures in this Adversary Proceeding (including whether the bankruptcy judge will sign the pre-trial orders for the non-core malpractice claims).

The court continues the Status Conference to facilitate the communications.

**REVIEW OF PLEADINGS, CORE AND NON-CORE STATEMENTS,
AND CONSENTS AND NON-CONSENTS TO BANKRUPTCY JUDGE ISSUING FINAL
ORDERS AND JUDGMENTS FOR NON-CORE MATTERS**

PLAINTIFF TRUSTEES SECOND AMENDED COMPLAINT

On October 2, 2015, the Trustee filed a Second Amended Complaint ("SAC"). Dckt. 44. The Second Amended Complaint alleges claims for and seeks the following relief:

- A. Allegations of Jurisdiction and Core Matters

1. Jurisdiction is asserted to exist pursuant to 28 U.S.C. §§ 151, 157(a), 157(b)(2), and 1334. SAC ¶ 2.
2. It is alleged that this Adversary Proceeding is a core proceeding pursuant to:
 - a. 28 U.S.C. § 157(b)(2)(A), "matters concerning administration of the estate; and
 - b. 28 U.S.C. § 157(b)(2)(E), "orders to turn over property of the estate."

B. Debtors, Sushi and Susea Prasad, commenced their Chapter 13 bankruptcy case on December 30, 2009. It was converted to a case under Chapter 7 on December 21, 2012. SAC ¶ 1.

C. Meyer Wilson Co., LPA, ("Defendant Attorneys") represented Debtors in *Prasad et. Al. V. World Group Securities, Inc.*, Financial Industry Regulation Authority Office, Case No. 12-00334, (the "Arbitration Claim") filed on January 31, 2012. SAC ¶¶ 7, 9

D. The claim related to the conduct of a broker working for World Group Security, Inc. ("WGS"), including claims for fraud, operation of a Ponzi scheme, and failure to supervise the broker. SAC ¶ 9.

E. It is alleged that Debtors concealed the existence of the Arbitration claim during their 341 Meeting on January 31, 2013. SAC ¶ 10.

F. On April 13, 2013, Debtors executed a Mediation Settlement Statement agreeing to accept \$105,000 in settlement of their claim, with attorneys' fees and expenses to be paid from that amount. The net proceeds of the settlement is computed to be \$59,822.03, after payment of expenses and costs. SAC ¶ 11.

G. The Settlement Agreement was executed on April 29, 2013. SAC ¶ 12. It provides for payment of the \$105,000.00 to Defendant Attorneys, as counsel for Debtors. SAC ¶ 12.

H. The claims and settlement proceeds thereof are asserted to be property of the bankruptcy estate. SAC ¶ 13.

I. Debtors did not seek and the bankruptcy court did not approve the Settlement and Debtors have not amended their Schedules to list the rights and claims as assets. SAC ¶ 15.

J. Defendant Attorneys were not authorized as counsel pursuant to 11 U.S.C. § 327 and Defendant Attorneys have not sought the allowance of fees pursuant to 11 U.S.C. § 330. SAC ¶ 16.

K. It is alleged that Debtors advised Defendant Attorneys that Debtors had filed bankruptcy and Debtors' case was pending. SAC ¶ 17.

L. Claims to avoid and recover the full \$105,000 is asserted as arising pursuant to 11 U.S.C. § 549 (post-petition transfers) and § 550 are asserted against Debtors. First Claim for Relief, SAC ¶¶ 19-23.

M. Claims to avoid the claim of the transfer of \$105,000.00 to Defendant Attorneys pursuant to 11 U.S.C. § 549 are asserted against Defendant Attorneys. Second Claim for Relief, SAC ¶¶ 24-27.

N. Claims to avoid the claim of the transfer of \$105,000.00 to Defendant Attorneys pursuant to 11 U.S.C. § 549 are asserted against TAFI. Third Claim for Relief, SAC ¶¶ 28-32.

O. Claims for violation of the automatic stay in purporting to settle and compromise rights and interests of the bankruptcy estate are asserted against all Defendants. Fourth Claim for Relief, SAC ¶¶ 33-36.

P. Claims for the turnover and an accounting to the \$60,000.00 of the settlement proceeds by Debtors are asserted against Debtors. Fifth Claim for Relief, SAC ¶¶ 37-42.

Q. Claims for the turnover and an accounting to the \$105,000.00 of the settlement proceeds by Debtors are asserted against Defendant Attorneys. Sixth Claim for Relief, SAC ¶¶ 43-48.

R. Claims for professional liability for duties alleged to be owed to the Plaintiff Trustee are asserted against Defendant Attorneys with respect to the rights and interest of the estate which were the subject of the Settlement. Seventh Claim for Relief, SAC ¶¶ 49-53.

DEFENDANT ATTORNEYS' ANSWER AND COUNTERCLAIM

Defendant Attorneys admit and deny specific allegations in the First Amended Complaint. Defendant Attorneys plead sixteen affirmative defenses.

Answer of Defendant Attorneys to Second Amended Complaint

Meyer Wilson Co, LPA ("Defendant Attorneys") filed its Answer ("MWA") and a Counterclaim ("MWCC") on October 22, 2015. Dckt. 56. In the Answer:

A. Defendant Attorney denies that the "bankruptcy court" has jurisdiction over this Adversary Proceeding. MWA ¶ 2.

B. Defendant Attorney denies that the claims asserted in the Second Amended Complaint are core matters, and Defendant Attorney does not consent to the bankruptcy judge entering final orders and judgment on non-core matters. MWA ¶ 3.

C. The Defendant Attorneys' Answer admits and denies specific allegations in the Second Amended Complaint.

D. The Defendant Attorneys plead seventeen affirmative defenses, including:

1. the claims are barred by the statute of limitations provided in 11 U.S.C. § 549(d) and 546(a);
2. that the claims of Debtors accrued post-petition;
3. the claims are barred by state law statute of limitations, Cal. C.C.P. §§ 337, 338, 339, 340, 340(3), 340.5, 340.6, and 343;

4. Plaintiff Trustee lacks standing;
5. The claims for punitive damages under California state law would violate Defendant Attorneys':
 - a. Constitution rights to substantive and procedure Due Process pursuant to the Fourteenth Amendment;
 - b. Constitute cruel and unusual punishment, and constitute excessive fines in violation of the Eighth Amendment;
 - c. Constitute a taking of private property for public use without compensation in violation of Defendant Attorneys' rights under the Fourteenth Amendment.

MWA ¶¶ 55, 56, 57, 61, 66, 69.

Counterclaim of Defendant Attorneys

In addition to the Answer, Defendant Attorneys filed a Counterclaim against Plaintiff Trustee. The Counterclaim alleges:

- A. Federal court jurisdiction exists in the bankruptcy court pursuant to 28 U.S.C. §§ 157 and 1334, and because the Counterclaim relates to the Second Amended Complaint in this Adversary Proceeding. MWCC ¶ 73.
- B. The Counterclaim does not make the affirmative required allegations of whether the claims are core matters, and if not core matter, whether Defendant Attorneys consent to the bankruptcy judge entering final orders and judgment on the Counterclaim. See Fed. R. Bankr. P. 7008, which in addition to incorporating Fed. R. Civ. P. 8(a), requires:

"In an adversary proceeding before a bankruptcy judge, the complaint, counterclaim, cross-claim, or third-party complaint shall contain a statement that the proceeding is core or non-core and, if non-core, that the pleader does or does not consent to entry of final orders or judgment by the bankruptcy judge."
- C. Debtors commenced their Chapter 13 case on December 30, 2009, and converted the case to one under Chapter 7 on December 21, 2012. MWCC ¶ 77.
- D. On August 19, 2010, Debtor invested monies with a broker at World Group Securities, Inc. MWCC ¶ 78.
- E. Debtors were the victims of fraud and a Ponzi scheme by the broker at World Group Securities, Inc. MWCC ¶ 78.
- F. Debtors learned of the fraud after the broker filed bankruptcy on August 19, 2010. MWCC ¶ 78.
- G. On January 31, 2012, Debtor Attorneys filed the Arbitration Claim

for Debtors. MWCC ¶ 29.

H. The causes of action asserted in the Arbitration Claim accrued post-petition for the Debtors and are legal or equity interests of the Debtors pursuant to 11 U.S.C. § 541(a)(1). Thus, the claims are not property of the bankruptcy estate for Debtors bankruptcy case filed on December 30, 2009. MWCC ¶ 79. FN.1.

FN.1.

11 U.S.C. § 541. Property of the estate

"(a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

(1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case."

I. The proceeds of the Settlement were never property of the estate. MWCC ¶ 80.

J. The First Claim for Relief requests the court determine the respective rights of the parties in the Arbitration Claim and the proceeds thereof. MWCC ¶¶ 81-84.

Defendant Attorneys Request for Jury Trial

Defendant Attorneys also filed its Demand for Jury Trial pursuant to Federal Rule of Civil Procedure 38(b). Federal Rule of Bankruptcy Procedure 9015 provides the procedure for jury trials in bankruptcy cases and adversary proceedings, incorporating the provisions of Federal Rule of Civil Procedure 38, 39, 47-49, and 51, and Federal Rule of Civil Procedure 81(c).

Plaintiff Trustee's Answer to Counterclaim

The Plaintiff Trustee has filed his Answer to the Defendant Attorneys' Counterclaim ("MWCC Ansr."), which responses include the following:

A. The Plaintiff Trustee admits the allegations of federal court jurisdiction for the Counterclaim. MWCC Ansr. ¶ 1.

B. The Answer does not state whether Plaintiff Trustee asserts that the counter claim is a core proceeding, and if not core, whether Plaintiff Trustee consents or does not consent to the bankruptcy judge entering the final orders and judgment thereon.

C. The Answer admits and denies specific allegations in the Counterclaim.

D. The Answer asserts one affirmative defense.

TRANSAMERICA FINANCIAL ADVISORS, INC.'S ANSWER AND CROSS COMPLAINT

Summary of Answer filed by Transamerica Financial Advisors, Inc.

Transamerica Financial Advisors, Inc, fka World Group Securities, Inc. ("TAFI") filed a First Amended Answer ("FAA") and Cross-Complaint ("FAACC") to the Complaint on October 22, 2015. Dckt. 70. In the First Amended Answer TAFI admits and denies specific allegations in the Second Amended Complaint. TAFI asserts seven affirmative defenses, including the doctrine of ratification and/or acquiescence, and injuries were not caused by TAFI.

TAFI denies the allegations that federal court jurisdiction exists pursuant to 28 U.S.C. §§ 151, 157(a), 157(b)(2), and 1334. TAFI FAACC ¶ 2.

TAFI also denies that the claims are core matters, and to the extent non-core consents to the entry of final orders and judgment in this Adversary Proceeding by the bankruptcy judge. TAFI FAACC ¶ 3.

Summary of Cross Complaint of Transamerica Financial Advisors, Inc.

TAFI asserts cross claims against Debtors, alleging:

A. Federal court jurisdiction for the Cross Claim against Debtors exists pursuant to 28 U.S.C. §§ 1334(b) and 157(a). Further, that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(A), (E), and (O), and if not core, TAFI consents to the bankruptcy judge issue all final orders and judgement on the Cross Claim. TAFI CC ¶¶ 1, 2.

B. In the First Claim for Relief, TAFI asserts claims for contractual indemnification from Debtors pursuant to the Settlement Agreement for any liability on the claims asserted by the Plaintiff-Trustee. TAFI CC ¶¶ 118-22.

C. In the Second Claim for Relief, TAFI asserts claims for intentional and negligent misrepresentation against Debtors to the extent of any liability of TAFI to the Plaintiff Trustee. TAFI CC ¶¶ 23-30.

D. In the Third Claim for Relief, TAFI asserts claims for equitable indemnification and contribution against Debtors. TAFI CC ¶¶ 31-36.

E. In the Fourth Claim for Relief, TAFI asserts claims for restitution or unjust enrichment against Debtor to the extent of any liability of TAFI to the Plaintiff Trustee. TAFI CC ¶¶ 37-39.

DEBTORS ANSWER AND CROSS CLAIMS

Summary of Debtor's Answer to Cross Claim of Transamerica Financial Advisors, Inc.

The Answer ("DTX Ansr.") of Sushil Prasad and Susea Prasad ("Debtors") admits and denies specific allegations in the Cross Claims. These include:

A. Debtors admit the allegations of federal court jurisdiction, that the claims in this Cross Claim are core matters, and to the extent non-core, consent to the bankruptcy judge issuing final orders and judgement. DTX Ansr. ¶¶ 1, 2.

B. Debtors assert sixth affirmative defenses, which include:

1. Debtors acted in good faith based on the advice of counsel. DTX Ansr. ¶ 40.
2. Debtors turned over \$26,000.00 of the proceeds to the Trustee, and should be credited that amount against any claim of TAFI. DTX Ansr. ¶ 41.
3. Debtors assert that TAFI has failed to join a necessary party, Defendant Attorneys. DTX Ansr. ¶ 42.
4. Debtors assert that the conduct of Defendant Attorneys is a superceding cause, which precludes TAFI asserting claims against Debtors. DTX Ansr. ¶ 45.

Summary of Cross Claim of Debtors Against Defendant Attorneys

Debtors have filed Cross Claims against Defendant attorneys. The allegations in the Cross-Claim ("DCC") include:

A. This court has jurisdiction for the Cross-Claim pursuant to 28 U.S.C. §§ 1334(b) and 157(a), that this is core proceeding pursuant to 28 U.S.C. § 157(b)(A), (E), and (O), and to the extent non-core, Debtors consent to the bankruptcy judge entering all final orders and judgement thereon. DCC ¶¶ 1, 2.

B. In the First Claim for Relief, Debtors assert that they are entitled to damages from Defendant Attorneys based on professional liability claims for damages incurred for the claims asserted by the Plaintiff Trustee and TAFI. DCC ¶¶ 13-20.

C. In the Second Claim for Relief, Debtors assert claims for equitable indemnification and/or contribution from Defendant Attorneys for damages incurred in this Adversary Proceeding to Plaintiff Trustee and TAFI. DCC ¶¶ 21-22.

Summary of Answer to Debtors' Cross-Claim by Defendant Attorneys "DCC (Ansr.)"

In the Answer, Defendant Attorneys:

A. Defendant Attorneys admit the allegations that federal court jurisdiction exists for the Cross-Claim. DCC Ansr. ¶ 1.

B. Defendant Attorneys deny that the Cross-Claim is a core matter and does not consent to the bankruptcy judge entering final orders and judgment thereon. DCC Ansr. ¶ 2.

C. Defendant Attorneys state fourteen affirmative defenses, which include:

1. The claims of Debtors which are the subject of this Adversary Proceeding were claims of the Debtors and not property of the bankruptcy estate. DCC Ansr. ¶ 22.
2. The claims of Debtors are barred by the applicable statutes of limitations, including, Cal. C.C.P. § 340.6. DCC Ansr. ¶ 28.
3. Defendant Attorneys assert that they relied in good

faith upon advice of counsel for the matters which are the subject of the Cross-Claim. DCC Ansr. ¶ 35.

4. Defendant Attorneys assert that Debtors expressly and impliedly assumed the risk of loss and damage for the matters in the Cross-Claim. DCC Ansr. ¶ 36.

STATUS REPORT BY PLAINTIFF-TRUSTEE

On August 13, 2015, the Plaintiff-Trustee filed a Status Report (Dckt. 25) advising that a motion for leave to file a Second Amended Complaint has been filed. The hearing on the motion is set for October 1, 2015. By the second amended complaint the Trustee seeks to assert a claim for professional negligence against the Defendant-Attorneys. It is stated that the claim is asserted by the Plaintiff-Trustee, asserting to be an owner of the claim which was settled, and the Plaintiff-Trustee not having authorized the Defendant-Attorneys to settle the claim which is asserted to be property of the estate.

In the motion (Dckt. 19) reference is made to the investment upon which the Arbitration Claim is based, was made prior to the bankruptcy case. This was stated in the Debtors' declaration in support of confirmation of the second modified Chapter 13 Plan. 09-94269, Dckt. 94. It is alleged that Defendant-Attorneys owed a duty of care to Plaintiff-Trustee, as the successor to Debtors when the case was converted to one under Chapter 7.

The deadline for filing an opposition to the motion for leave to file second amended complaint has not expired.

STATUS CONFERENCE STATEMENT FILED BY DEBTORS

On February 10, 2016, Debtors filed their Status Conference Statement. Dckt. 91. Debtors repeat their allegations of federal court jurisdiction for this Adversary Proceeding and that the claims therein are core matters. Debtors also repeat their consent to the bankruptcy judge issuing all final orders and the judgments in this Adversary Proceeding.

STATUS CONFERENCE STATEMENT FILED BY PLAINTIFF TRUSTEE

The Plaintiff Trustee filed a Status Report on February 18, 2016. The Plaintiff Trustee reports that all Parties have exchanged initial disclosures.

STATUS CONFERENCE STATEMENT FILED BY DEFENDANT ATTORNEYS

Defendant Attorneys filed a Status Report on February 19, 2016. Dckt. 107. Defendant Attorneys state that all parties have exchanged their initial disclosures.

The Report recites that as between the Plaintiff Trustee and Debtors, the court approved a settlement in December 2015.

FINAL BANKRUPTCY COURT JUDGMENT

In the Second Amended Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334, 151, and 157(a) and (b), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b) (2) (A) and (E). To the extent any claims are not core, Plaintiff Trustee consents to the bankruptcy judge entering all final orders and judgments in this Adversary

June 2, 2016 at 2:00 p.m.

Proceeding for the Second Amended Complaint and all Counterclaims and Cross-Claims as of the February 25, 2015 Status Conference.

TAFI and the Debtors agree that federal jurisdiction exists for this Adversary Proceeding and that it is a core proceeding. To the extent any claims are not core, TAFI and Debtors consent to the bankruptcy judge entering all final orders and judgments in this Adversary Proceeding for the Second Amended Complaint and all Counterclaims and Cross-Claims as of the February 25, 2015 Status Conference.

Defendant attorneys agree that federal jurisdiction exists for this Adversary Proceeding. While admitting that some of the claims are core proceedings, Defendant Attorneys do not consent to the bankruptcy judge entering all final orders and judgments in this Adversary Proceeding for the Second Amended Complaint and all Counterclaims and Cross-Claims for non-core matters.

In its Answer and Counterclaim, Defendant Meyer Wilson Co., LPA denies, on information and belief, that the Bankruptcy Court (federal court) has jurisdiction over this Adversary Proceeding pursuant to 28 U.S.C. §§ 151, 157(a), and 1334, and the referral of bankruptcy cases to this court pursuant to General Orders 182 and 223 of the United States District Court for the Eastern District of California. Answer ¶ 2, Dckt. 14. Based on information and belief, Defendant-Attorneys also denies that this is a core proceeding pursuant to 28 U.S.C. § 157(b) (A) and (E). Answer ¶ 3, *Id.* To the extent that this is not a core proceeding, Defendant-Attorneys state that they do not consent to the bankruptcy judge entering final orders and the judgment. *Id.*

In the Counterclaim Defendant-Attorneys affirmatively pleads that the Bankruptcy Court has jurisdiction over the claims raised in this Adversary Proceeding pursuant to 28 U.S.C. §§ 157 and 1334, because this Adversary Proceeding relates to the Chapter 7 bankruptcy case of Defendant-Debtors.

ISSUANCE OF PRE-TRIAL SCHEDULING ORDER

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

- a. The Plaintiff alleges that jurisdiction exists for this Adversary Proceeding pursuant to 28 U.S.C. § 1334 and 157, and the referral to this bankruptcy court from the United States District Court for the Eastern District of California. Further, that this is a core proceeding before this bankruptcy court pursuant to 28 U.S.C. § 157(b) (2) (A), (N), and (O). First Amended Complaint, ¶¶ X, X, Dckt. X. The Defendant admits the jurisdiction and that this is a core proceeding. Answer, ¶¶ X, X, Dckt. X. To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this is Adversary Proceeding are related to proceedings, 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 claims and issues in this Adversary Proceeding referred to the bankruptcy court.
- b. Initial Disclosures shall be made on or before -----, 2016.
- c. Expert Witnesses shall be disclosed on or before -----, 2016,

and Expert Witness Reports, if any, shall be exchanged on or before --
-----, 2016.

d. Discovery closes, including the hearing of all discovery motions,
on -----, 2016.

e. Dispositive Motions shall be heard before -----, 2016.

f. The Pre-Trial Conference in this Adversary Proceeding shall be
conducted at ----- p.m. on -----, 2016.

10. [09-94269-E-7](#) SUSHIL/SUSEA PRASAD
[15-9018](#) MF-2
FERLMANN V. PRASAD ET AL

CONTINUED MOTION TO COMPEL
AND/OR MOTION FOR SANCTIONS
1-26-16 [[80](#)]

**NO TENTATIVE RULING HAS BEEN POSTED TO AFFORD THE
PARTIES AND COUNSEL THE MAXIMUM OPPORTUNITY TO
CONSENSUALLY RESOLVE THIS MATTER**

**As all counsel are aware, the court's decisions on the
award of fees, damages, and other economic issues is not
a "Split the Baby" process.**

No Tentative Ruling: The Motion For Order Compelling Meyer Wilson Co. LPA to Respond to Plaintiff's Interrogatories, Request for Production, and Sanctions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Meyer Wilson and Meyer Wilson's counsel on January 27, 2016. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion For Order Compelling Meyer Wilson Co. LPA to Respond to Plaintiff's Interrogatories, Request for Production, and Sanctions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The Motion For Order Compelling Meyer Wilson Co. LPA to Respond to Plaintiff's Interrogatories, Request for Production, and Sanctions is -----.

Stephen Ferlmann ("Plaintiff"), the Chapter 7 Trustee for the estate of Sushil Prasad and Susea Prasad ("Debtor") and the plaintiff in this Adversary Proceeding, filed the instant Motion For Order Compelling Meyer Wilson Co. LPA to Respond to Plaintiff's Interrogatories, Request for Production, and Sanctions on January 26, 2016. Dckt. 80.

The Plaintiff filed the instant Adversary Proceeding No. 15-09018 on May 29, 2015. Dckt. 1. The Plaintiff served Meyer Wilson Co. LPA ("Meyer Wilson") with Plaintiff's Request for Interrogatories - Set One and Request for Production of Documents on August 27, 2015. The Plaintiff asserts that Meyer Wilson had until October 1, 2015 to respond. The Plaintiff gave a week extension at the request of Meyer Wilson. The Plaintiff asserts that on October 8, 2015, Meyer Wilson produced responses to both the interrogatories and request for documents. However, the Plaintiff argues that Meyer Wilson did not comply with the Federal Rules of Civil Procedure and objected to the requests on the basis of attorney-client privilege and/or work product doctrine. Furthermore, the Plaintiff asserts that Meyer Wilson did not produce a privilege log.

The Plaintiff received the privilege log and amended responses to the Request for Documents on October 16, 2015.

As to the interrogatories, Plaintiff argues that the responses are incomplete and evasive and the objections raised by Meyer Wilson are frivolous. The Plaintiff states that for most of the interrogatories answers, Meyer Wilson objected on the following grounds:

1. "Vague and ambiguous"
2. "Overbroad, unduly burdensome and oppressive"
3. "protected by the attorney-client privilege and/or work product doctrine"

The Plaintiff asserts that, because Meyer Wilson's responses are allegedly inadequate and its objections meritless, Meyer Wilson has waived any objections and must be ordered to full respond to the interrogatories listed on the separate document filed by Plaintiff in compliance with Local Bankr. R. 9014-2. Dckt. 82.

As to the request for documents, the Plaintiff begins by stating that the Debtor waived the protections provided by attorney-client privilege and work product doctrine pursuant to their attorney-client relationship with Meyer Wilson. On December 9, 2015, the court approved the settlement agreement between the Debtor and the Plaintiff in the underlying bankruptcy case which contained such waiver. Case No. 09-94269, Dckt. 148.

In light of this waiver, the Plaintiff asserts that the Plaintiff is

entitled to the documents listed in the privilege log and Meyer Wilson should be ordered to produce them.

Plaintiff also requests that the court order Meyer Wilson to pay the attorney's fees and expenses of the Plaintiff due to Meyer Wilson's alleged improper objections, incomplete responses, and failure to provide the documents in the Privilege Log. The Plaintiff is seeking \$5,000.00 in reimbursement.

MEYER WILSON'S OPPOSITION

Meyer Wilson filed an opposition to the instant Motion on February 11, 2016. Dckt. 93.

Meyer Wilson first argues that Plaintiff did not attempt to meet and confer on Meyer Wilson's responses and document production until after the December 9, 2015 court approval of the Settlement Agreement between Debtor and Plaintiff.

Meyer Wilson asserts that Plaintiff sent a meet and confer correspondence on December 11, 2015, claiming that because the Debtor agreed to waive the attorney-client privilege, Meyer Wilson must now amend their responses and produce the documents withheld on the basis of the attorney-client privilege and work product doctrine. Meyer Wilson alleges that there were no dates given to when Meyer Wilson should respond.

Meyer Wilson claims that the work product that Debtor had purportedly waived is inextricably intertwined with Meyer Wilson's clients who were also claimants in the Arbitration Claim but are not parties to the instant Adversary Proceeding and are not involved in the Debtor's legal malpractice claim. Meyer Wilson argues that it cannot produce the remaining documents identified in the privilege log because its non-party clients have not waived the privilege.

Due to the failure of Plaintiff to engage in good faith effort to resolve discovery disputes, Meyer Wilson asserts that the Motion should be dismissed. Meyer Wilson argues that, pursuant to Fed. R. Civ. P. 37, Plaintiff did not sufficiently engage and adequately certify that, prior to the instant Motion, Plaintiff made a good faith effort to resolve the disputes. Meyer Wilson argues that the December 11, 2015 letter alone is not sufficient to show a good faith effort, especially in light of Meyer Wilson allegedly contacting Plaintiff following the letter to meet and confer to resolve the disputes.

Additionally, Meyer Wilson claims that it has complied regarding Plaintiff's request for production of documents and has made all responsive documents, not subject to an objection, available to the Plaintiff. Meyer Wilson claims that it has produced all attorney-client correspondence between Meyer Wilson and Debtor to Plaintiff, as well as a supplemental privilege log. Meyer Wilson argues that the remaining documents that have been withheld are on the basis of work product and attorney-client privilege as these documents not only relate to Meyer Wilson's representation of the non-party clients who were also claimants in the Arbitration Claim. Due to the non-party clients not waiving their privilege, Meyer Wilson argues that it cannot produce those documents.

Meyer Wilson further alleges that it has provided complete and proper responses and objection to the Plaintiff's interrogatories. Meyer Wilson

concedes that it did not adequately explain the basis for how the interrogatories were "vague and ambiguous," "overbroad, unduly burdensome and oppressive" and not relevant. However, Meyer Wilson claims that it attempted to meet and confer with the Plaintiff after the instant Motion was filed. Meyer Wilson asserts that it is working to supplement its responses to the interrogatories to address the concerns raised in the Motion.

As to the request that the court deem waived all of Meyer Wilson's objections and claims of privilege waived, Meyer Wilson asserts that this is improper. Meyer Wilson argues that it responded to the interrogatories and at the time the privilege had not been waived by the Debtor. As such, Meyer Wilson was under a duty to object on that basis and not provide responses to Plaintiff. The fact that the settlement between Plaintiff and Debtor does not retroactively make Meyer Wilson's prior objections meritless or improper justifying waiver of all objections. Meyer Wilson once again argues that the Plaintiff's letter on December 11, 2015 was not sufficient as a meet and confer request.

Lastly, Meyer Wilson asserts that sanctions are premature and not warranted. Meyer Wilson reiterates that at the time of supplying the responses, the privilege had not been waived and that Meyer Wilson had complied with all discovery deadlines. Because the Plaintiff allegedly filed the instant Motion rather than attempting to meet and confer to settle the disputes, Meyer Wilson argues that sanctions are improper at this time.

PLAINTIFF'S REPLY

The Plaintiff filed a reply on February 18, 2016. Dckt. 100. The Plaintiff argues that Meyer Wilson continues to engage in a pattern of delay and has failed to respond fully to the discovery requests. The Plaintiff argues that it has acted in good faith to resolve the discovery disputes by offering a one-week extension for responses in October and then the letter on December 11, 2015. The Plaintiff asserts that it was not until February 10, 2016 that Meyer Wilson contacted Plaintiff to meet and confer. Plaintiff asserts that the delay was due to Meyer Wilson waiting for the District Court to rule on its Motion to Withdraw the Reference. It was not until the denial of the Motion to Withdraw the Reference that the Plaintiff alleges Meyer Wilson attempted to confer with Plaintiff.

Additionally, Plaintiff argues that Meyer Wilson should be ordered to produce the documents identified in the amended privilege log and to supplement its responses to the interrogatories. Plaintiff alleges that, to the extent the documents in the amended privilege log pertain to Meyer Wilson's representation of group two claimants in the Arbitration Claim, which the Debtor was a part of, and not specific to claimants other than the Debtor, Plaintiff is entitled to those documents. Specifically, the Plaintiff asserts that it is entitled at a minimum to the following documents that relate to group two claimants:

1. MWC000273-232
2. MWC000324
3. MWC000326-MWC000327
4. MWC000332-MWC000333
5. MWC000337
6. MWC000345
7. MWC000348

8. MWC000354
9. MWC000356
10. MWC000366
11. MWC000370
12. MWC000372
13. MWC000375-MWC000382
14. MWC000539-MWC000541
15. MWC000543

Plaintiff argues that if in these documents there is specific information with respect to a claimant other than the Debtor, Plaintiff argues that Meyer Wilson can redact that information.

Plaintiff asserts there are documents that pertain only to Debtor, relate to the Debtor's bankruptcy, and documents produced by experts or consultants with respect to the arbitration claim that should be provided. Specifically, the Plaintiff lists the following documents:

1. MWC000330
2. MWC000349-MWC000350
3. MWC000577-MWC000580
4. MWC000634-MWC000669

SUPPLEMENTAL DECLARATION OF KRISTIN IVERSEN

Meyer Wilson filed the supplemental declaration of Kristin Iverson on February 19, 2016. Dckt. 104. Ms. Iverson testifies that Meyer Wilson hand served amended interrogatory responses as well as an additional document originally withheld on the basis of the attorney-client privilege between Meyer Wilson and its attorney Kathy Phelps an February 19, 2016.

Ms. Iverson also asserts that Meyer Wilson has not purposefully attempted to hinder discovery. Rather, Ms. Iverson claims that Meyer Wilson acted with the intent of protecting the privilege of clients in the arbitration claim that had not waived their privilege.

Ms. Iverson attaches the February 12, 2016 email chain between Ms. Iverson and Plaintiff's counsel and the amended interrogatory and document production responses. Dckt. 105, Exhibit A and B.

APPLICABLE LAW

Discovery

Federal Rule of Civil Procedure 37(a)(1), made applicable in bankruptcy adversary proceedings by Federal Rule of Bankruptcy Procedure 7037, requires that a motion to compel discovery "include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make . . . discovery in an effort to obtain it without court action." Federal Rule of Civil Procedure 37 Civil Rule 37(c) sanctions the failure to supplement discovery responses.

The certification requirement of Federal Rule of Civil Procedure 37(a)(1) was described in *Shuffle Master v. Progressive Games*, 170 F.R.D. 166 (D. Nev. 1996) as comprising two elements:

[T]wo components are necessary to constitute a facially valid motion to compel. First is the actual certification document. The certification must accurately and specifically convey to the court who, where, how, and when the respective parties attempted to personally resolve the discovery dispute. Second is the performance, which also has two elements. The moving party performs, according to the federal rule, by certifying that he or she has (1) in good faith (2) conferred or attempted to confer. Each of these two sub components must be manifested by the facts of a particular case in order for a certification to have efficacy and for the discovery motion to be considered.

Shuffle Master, 170 F.R.D. at 170. The court went further, stating that "[A] moving party must include more than a cursory recitation that counsel have been 'unable to resolve the matter.'" 170 F.R.D. at 171.

If the party on whom the interrogatories were served responds by serving objections to some or all of the interrogatories, or serves answers that the interrogating party considers evasive or incomplete, and if the propounding party has tried unsuccessfully to negotiate a resolution of the dispute, a motion for an order compelling answers may be appropriate. 7-37 Moore's Federal Practice, § 37.02 (Matthew Bender 3d ed.)

Federal Rule of Civil Procedure 37(a)(3) and Federal Rule of Bankruptcy Procedure 7037 provide that upon the failure to provide a Response to Interrogatories or Production of Documents the court may compel such Responses and Productions, and order appropriate sanctions. The sanctions which may be ordered by the court include:

- (1) directing that the matters or facts which are the subject of the discovery are established for the adversary proceeding as asserted by the requesting party;
- (2) prohibiting the party failing to produce the discovery from supporting or opposing designated claims or defendants, or introducing designated matters into evidence with relate to the discovery;
- (3) Striking pleadings (including the Answer), in whole or in part;
- (4) Issuing a default judgment against the party failing to provide the Responses or Produce the Documents; or
- (5) Treating as contempt of a federal court order the failure to comply with the order to provide Responses to the Interrogatories or Produce the Documents.

For a party seeking reasonable payment of expenses in bringing a motion for an order to compel discovery, Federal Rule of Civil Procedure Rule 37(a)(5) states "If the motion is granted-or if the disclosure or requested discovery is provided after the motion was filed-the Court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movement's reasonable expenses incurred in making the motion, including attorney's fees".

Sanctions and Contempt

Bankruptcy Courts have the jurisdiction to impose sanctions. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 395 (1990); *Miller v. Cardinale (In re DeVille)*, 631 F.3d 539, 548-49 (9th Cir. 2004). The court also has the inherent civil contempt power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (In re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); see also 11 U.S.C. § 105(a).

Federal Rule of Bankruptcy Procedure 9011 imposes obligations on both attorneys and parties appearing before the bankruptcy court. This Rule covers pleadings file with the court. If a party or counsel violates the obligations and duties imposed under Rule 9011, the bankruptcy court may impose sanctions, whether pursuant to a motion of another party or sua sponte by the court itself. These sanctions are corrective, and limited to what is required to deter repetition of conduct of the party before the court or comparable conduct by others similarly situated.

A Bankruptcy Court is also empowered to regulate the practice of law before it. *Peugeot v. U.S. Trustee (In re Crayton)*, 192 B.R. 970, 976 (B.A.P. 9th Cir. 1996). The authority to regulate the practice of law includes the right to discipline attorneys who appear before the court. *Chambers v. NASCO, Inc.* 501 U.S. 32,43 (1991); see also *Lehtinen*, 564 F.3d at 1058.

The primary purpose of a civil contempt sanction is to compensate losses sustained by another's disobedience to a court order and to compel future compliance with court orders. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1192 (9th Cir. 2003). The contemtor must have an opportunity to reduce or avoid the fine through compliance. *Id.* The court's authority to regulate the practice of law is broader, allowing the court to punish bad faith or willful misconduct. *Lehtinen*, 564 F.3d at 1058. However, the court cannot issue punitive sanctions pursuant to its power to regulate the attorneys or parties appearing before it. *Id.* at 1059.

DISCUSSION

To begin, the court first starts with the Statement filed by the Plaintiff, in compliance with Local Bankr. R. 9014-2, which outlines the discovery responses the Plaintiff alleges are insufficient.

1. Interrogatories

a. No. 1:

- i. Interrogatory: "Please state the full name, address, job title and employer of each Person answering and assisting in answering these Interrogatories."
- ii. Response: "Meyer Wilson Co., LPA with the assistance of its attorneys of record Murphy Pearson Bradley & Feeney."

b. No. 7:

- i. Interrogatory: Do You contend that the Debtors breached any obligation or duty under any contract between You and

the Debtors?"

ii. Response: "Responding Party objects to this request on the grounds that it vague and ambiguous. Responding Party further objects to the extent that it requests information that is protected by the attorney-client privilege and/or work product doctrine. Responding Party objects to this interrogatory on the grounds that it is overbroad, unduly burdensome, and oppressive. Responding Party objects to this interrogatory on the ground that the information sought is not relevant to the subject matter of the action and is not reasonably calculated to lead to the discovery of admissible evidence."

c. No. 8:

i. Interrogatory: "Do You contend that the Debtors failed to follow any instructions or directions, issued by You, that adversely affected the Arbitration Claim?"

ii. Response: "Responding Party objects to this request on the grounds that it vague and ambiguous. Responding Party further objects to the extent that it requests information that is protected by the attorney-client privilege and/or work product doctrine. Responding Party objects to this interrogatory on the grounds that it is overbroad, unduly burdensome, and oppressive. Responding Party objects to this interrogatory on the ground that the information sought is not relevant to the subject matter of the action and is not reasonably calculated to lead to the discovery of admissible evidence."

d. No. 9:

i. Interrogatory: "Please state the full name, mailing address, e-mail address and telephone number of each Person, having any knowledge of the relevant facts relating to the basis of this adversary proceeding, the cause thereof, or the damages resulting therefrom."

ii. Response: "Witnesses include the Prasads, and the attorneys and staff employees of Meyer Wilson Co., LPA. The relevant contact information of the witnesses are known to the Propounding Party."

e. No. 11:

i. Interrogatory: "In connection with Your representation of the Debtors in the Arbitration Claim, did you consult with any expert? If so, please provide:

(1) The name, mailing address, e-mail address and telephone number of such expert;

(2) The name of the employee, agent, representative,

attorney or investigator of You who sought such expert's opinion and the date such opinion was sought;

- (3) The opinion, whether tentative, preliminary, or final, rendered by such expert, and the date such opinion was rendered;
- (4) Please provide copies of any such expert's writing, documents or reports, as well as copies of your writings, documents or memoranda about such expert's opinion;
- (5) If such expert did not prepare a writing, document or report concerning the investigation or opinion, whether You prepared a writing, document or memorandum about such experts opinion."

ii. Response: "Responding Party objects on the grounds that it is vague and ambiguous as to the term 'consult' and 'expert'. Responding Party further objects to this request to the extent that it requests information that is protected by the attorney - client privilege and/or work product.

Without waiving and subject to the foregoing, Responding Party responds as follows: Meyer Wilson Co., LPA retained expert witness {P. Richard Evans, 9450 N. Meridian Street, Suite 300, Indianapolis, IN 46260 solely to calculate damages in connection with Meyer Wilson Co., LPA's representations of the Prasads. Meyer Wilson Co. LPA will produce documents in its possession in response to the above interrogatory to the extent the request is not objectionable, if any."

f. No. 13:

- i. Interrogatory: "Please describe all Communications between You and attorney Kathy Phelps regarding the Debtor's bankruptcy. For each Communication, state its substance, identify the date, all Persons in attendance, the location, and all documents discussed or referred to.
- ii. Answer: "Responding Party objects on the grounds that it is vague and ambiguous. Responding Party further objects to this request to the extent that it requests information that is protected by the attorney-client privilege and/or work product. Kathy Phelps was retained as a legal consultant in the FINRA arbitration and was not disclosed or used as an expert witness in that action."

g. No. 15:

- i. Interrogatory: "Please state Your opinion as to whether the settlement of the Arbitration Claim for \$105,000 was fair and reasonable and state all facts in support of your opinion."
- ii. Answer: "Responding Party objects on the grounds that it is vague and ambiguous. Responding Party further objects to this request to the extent that it requests information that is protected by the attorney-client privilege and/or work product.

Without waiving and subject to the foregoing objections, Responding Party responds as follows: Based on 15 years' experience representing approximately 1,000 investors with claims against brokerage firms in FINRA arbitration, including numerous cases similar to claims pursued in this underlying claim, this settlement was extremely fair and reasonable."

h. No. 17:

- i. Interrogatory: "Please identify with particularity when, where and how You were notified of the Debtors' bankruptcy."
- ii. Answer: "Responding Party objects to this request to the extent that it requests information that is protected by the attorney-client privilege and/or work product."

i. No. 19:

- i. Interrogatory: "Describe all Communications between the Debtors and You regarding the underlying facts supporting the Arbitration Claim, including their investments with Vincent Thakur Signh. For each Communication, state its substance, identify the date, all Persons in attendance, the location, and all documents discussed or referred to."
- ii. Answer: "Responding Party objects to this request to the extent that it requests information that is protected by the attorney-client privilege and/or work product.

Without waiving and subject to the foregoing objections, Responding Party responds as follows: Meyer Wilson Co., LPA does not recall exact specifics with regard to the date and substance of all communications with the Prasads."

j. No. 20:

- i. Interrogatory: "Please describe with particularity all amounts, dates, and methods by which You received payments from Transamerica in connection with the Arbitration Claim."

- ii. Answer: "Responding Party objects to this request to the extent that it requests information that is protected by the attorney-client privilege and/or work product. Responding Party objects to this request on the grounds that it is vague and ambiguous and overbroad.

Without waiving subject to the foregoing objections, Responding Party responds as follows: Transamerica Financial Advisors, Inc. sent a check via Federal Express to Meyer Wilson Co., LPA on May 16, 2013 relating to the Arbitration Claim. The amount of the payment is confidential, as it relates not only to the Prasads, but to other non-parties to this lawsuit."

k. No. 22:

- i. Interrogatory: "Please identify in detail all written, recorded or oral statements that You have obtained from the Debtors in connection with the Arbitration Claim, including the date the statement was obtained and the name of the Person obtaining the statement."

- ii. Answer: "Responding Party objects to this request to the extent that it requests information that is protected by the attorney-client privilege and/or work product, or other applicable privilege.

Without waiving and subject to the foregoing objections, Responding Party responds as follows: Meyer Wilson Co., LPA does not recall exact specifics with regards to the date of all communications with the Prasads."

2. Request for Documents

- a. The Plaintiff asserts that Meyer Wilson submitted a Privilege Log and is required to provide the documents listed in the Privilege Log because the Debtors waived all confidentiality and privileges pursuant to their attorney-client relationship with Meyer Wilson as detailed in the Settlement Agreement.

Dckt. 82.

The Plaintiff relies on the Settlement Agreement between the Plaintiff and the Debtor as grounds that the attorney-client privilege and confidentiality have been waived. On November 12, 2015, the Plaintiff filed a Motion to Approve Settlement Agreement in the underlying bankruptcy case. Case No. 09-94269, Dckt. 139. The court approved the settlement on December 3, 2015. Case No. 09-94269, Dckt. 139. The specific provision of the settlement which is the heart of the instant Motion is § 1.3 which states:

- 1.1 Debtors shall pay to the Trustee the sum of \$26,000.00 in full and complete settlement of the claims asserted against the Debtors in the Adversary Proceeding. Receipt of said payment is acknowledged.

1.2 The Debtors shall cooperate with the Trustee and Trustee's Counsel in testifying to the facts of the Adversary Proceeding, the Arbitration Claim, and Meyer Wilson's representations of the Debtors, including but not limited to:

(a) Providing to the Trustee and Trustee's counsel all documents including but not limited to writings, memoranda, notes, correspondence, statements, expert reports, pleadings, financial records, checks, and agreements in their possession relating to the arbitration claim, the Adversary Proceeding, and Meyer Wilson's representation of the Debtors.

(b) Cooperation with the Trustee and Trustee's counsel in obtaining all papers and property (client file), including but not limited to writings, memoranda, notes, correspondence, statements, expert reports, pleadings, financial records, checks, and agreements held with Meyer Wilson with respect to their representation of the Debtors.

1.3 The Debtors hereby waive confidentiality and privileges pursuant to the attorney-client relationship with Meyer Wilson, and consent to the disclosure of information to the Trustee and Counsel for Trustee, which are confidential and privileged. The Debtors waive the attorney-work product privilege in all respects.

Case No. 09-94269, Dckt. 143, Exhibit C. The settlement is signed by the Debtor and by the Debtor's attorney.

February 25, 2016 Hearing

After reviewing the papers in connection with the instant Motion, it is clear to the court that the professional discourse between some counsel and parties in this Adversary Proceeding has broken down. While parties and their counsel may elect to so engage in such conduct, it does not come without a cost. (Whether it be sanctions, monies expended unproductively for attorneys' fees, or the ultimate fees which attorneys may be paid by their clients.)

At the hearing, the Parties were ordered to meet and confer concerning the supplemental responses and further proposed responses by Defendant Attorneys. On or before March 31, 2016, the Parties were ordered to file supplemental pleadings advising the court of the issues resolved, additional proposals for responses by Defendant Attorneys, and replies to such additional proposed responses.

The matter was continued to 2:00 p.m. on April 7, 2016. Dckt. 114.

PLAINTIFF'S STATUS REPORT

The Plaintiff filed a status report on March 31, 2016. Dckt. 117. The Plaintiff states that the Parties have met and conferred numerous times in order to resolve the discover disputes pertaining to documents requested by Plaintiff.

As to the documents concerning Group 2 Claimants, the Plaintiff asserts that he is yet to receive the documents previously requested. The Plaintiff asserts that the Defendant is only willing to produce documents pertaining to Group 2 claimants if the parties enter into a stipulated protective order requiring that the documents be filed under seal if submitted to the court. The Plaintiff argues that the protective order is not necessary and that any third party would have their names and other identifying information redacted prior to submission to Plaintiff. However, the Plaintiff, in the interest of resolving the issue, agrees to enter into a protective order. The Plaintiff states that the Parties are circulating a draft of such stipulation currently.

As to the document pertaining to Kathy Bazoian Phelps, the Plaintiff states that the Defendant represented that Ms. Phelps was hired as a consultant in the Financial Industry Regulatory Authority arbitration action. Dckt. 82. However, the Plaintiff asserts that after the instant Motion, Defendant produced an opinion letter from Ms. Phelps to Defendant, revealing that Ms. Phelps was not hired as a consultant but rather in connection with several claimants' personal bankruptcies. The Plaintiff asserts that the Defendant misrepresented Ms. Phelps' services prior and it was not until the instant Motion that the Defendant produced this letter. Additionally, the Plaintiff asserts that Defendant has been unwilling to produce certain correspondence and the retainer agreement between Defendant and Ms. Phelps on the grounds that the documents were subject to the attorney-client privilege. The Plaintiff argues that this is baseless because Ms. Phelps was retained in connection with several of the claimants' bankruptcies, including the Debtor's own bankruptcy.

The Plaintiff does state that the Defendant is now willing to produce the requested correspondence and retainer agreement, subject to a stipulated protective order.

Lastly, the Plaintiff reiterates his request for attorney's fees pursuant to Fed. R. Civ. P. 37(a)(5)(A). Additionally, Plaintiff is seeking additional fees in compensation for its continuing efforts to receive the documents requested. Plaintiff states that it will file an updated itemization of fees.

DEFENDANT'S SUPPLEMENTAL BRIEF

The Defendant filed a supplemental brief on March 31, 2016. Dckt. 119.

The Defendant states that the Parties are currently working on finalizing a stipulated protective order. The Defendant has stated that it will produce the documents once the order is finalized and filed. The Defendant states that the stipulated protective order must be approved and signed by the Debtors and Transamerica. The Defendant anticipates that the protective order will be filed shortly after the April 7, 2016, hearing.

The Defendant argues that it has attempted to meet and confer with the Plaintiff in good faith and provide complete and proper responses. The Defendant asserts that the award of attorney's fees would be improper because

they are unduly punitive and are unwarranted. The Defendant argues that its initial responses were based on the attorney-client privilege that Debtors had not yet waived, as well as the attorney-client privilege and work product relating to its other clients and its own attorney, Kathy Phelps. The Defendant argues that the email sent by the Plaintiff on December 11, 2015 was ambiguous and did not qualify as an attempt to meet and confer. The Defendant argues that it has attempted in good faith to resolve the issues arising in the Motion to Compel and that the parties are working on a stipulated protective order.

APRIL 7, 2016 HEARING

At the hearing the parties stated that they believed the discovery would be completed and an order compelling would not be required, but the production was still in process. Plaintiff-Trustee continues to assert the right to recover attorneys' fees.

The court continued the instant Motion to 2:00 p.m. on June 2, 2016. On or before April 22, 2016, the Plaintiff-Trustee was ordered to file and serve supplemental pleadings setting forth the basis and amount of the attorneys' fees sought in connection with the Motion, Opposition shall be filed and served on or before May 6, 2016; and Replies, if any, filed and served on or before May 13, 2016.

PLAINTIFF-TRUSTEE'S DECLARATION

On April 22, 2016, Iain Macdonald, a partner at Macdonald Fernandez LLP and one of the attorneys for Plaintiff-Trustee, filed a declaration. Dckt. 135.

Mr. Macdonald declares that on April 14 and 15, 2016, Defendant produced additional documents pursuant to the stipulated protective order. Mr. Macdonald asserts that he has not received all the documents requested and is still incurring attorneys fees. Due to this, Mr. Macdonald asserts that he is unable to meet the deadline for an itemization of attorneys fees.

Mr. Macdonald declares that he sent an itemization of the fees incurred thus far to Defendant. On April 20, 2016, Mr. Macdonald states that he met and conferred telephonically with Kristin Iversen, counsel for Defendant. Mr. Macdonald states that as of April 21, 2016, he has not received a response to the requested attorneys fees.

DEFENDANT'S DECLARATION

On May 6, 2016, Kristin Iverson, an associate at Murphy, Pearson, Bradley & Feeney and one of the attorneys for Defendant, filed a declaration. Dckt. 137.

Ms. Iverson states that since the April 7, 2016 hearings the parties have entered into a stipulation for protective order. On April 18, 2016, the Ms. Iverson states that she received an email from Plaintiff's counsel regarding the recent document production, stating that some documents in the production identified did not seem to be produced. Ms. Iverson states that the next day she responded stating that the Defendant had previously produced those items.

Ms. Iverson declares that Defendant reviewed its files again in light

of the April 18, 2016 email to ensure that all documents identified had been produced. The Defendant came across additional documents that were responsive to Plaintiff's initial request that were inadvertently not included in the document production. Ms. Iverson states that on May 6, 2016 she produced to Plaintiff the additional documents.

Ms. Iverson declares that the issues identified in the Motion to Compel have been resolved. Ms. Iverson asserts that the Defendant has produced all requested documents and additional responsive documents. Ms. Iverson declares that the Defendant has supplemented its interrogatory responses to address the issues raised in the Motion to Compel.

Ms. Iverson states that she does not believe that attorneys fees are appropriate in the instant case. Ms. Iverson states that she has met and conferred with Mr. Macdonald in an attempt to settle the matter. Ms. Iverson has offered \$4,000.00 to settle his claim for attorneys fees.

PLAINTIFF-TRUSTEE'S SUPPLEMENTAL DECLARATION

Mr. Macdonald filed a supplemental declaration on May 26, 2016. Dckt. 139. Mr. Macdonald states that while he understands that Defendant has responded to the discovery requests, it took Defendant more than seven months to respond from when the requests were served and more than three months following the instant Motion being filed. Mr. Macdonald asserts that the requests for fees is warranted under Fed. R. Civ. P. 37(a)(5)(A) because Defendant has engaged in a pattern of delay. Mr. Macdonald attaches the itemization of attorney fees. Dckt. 140, Exhibit A.

After restating the history of Defendant's failure to properly produce documents, Mr. Macdonald states that the Protective Order proposed by Defendant and agreed to by Plaintiff in order to continue discovery was poorly crafted and required significant modifications and time by the Plaintiff to correct. Additionally, Mr. Macdonald argues that Defendant repeatedly refused to produce certain documents pertaining Kathy Phelps. Defendant's refusal to provide the documents was allegedly unfounded because Ms. Phelps was retained by Defendant in connection with its representation with the Debtors. On April 5, 2016, Defendant agreed to provide the documents but only after causing significant delay.

Mr. Macdonald concludes by stating that "it is only after 7 months, two hearings on the motion to compel, more than 42 hours of attorney time and \$11,800 in attorneys' fees, did [Defendant] produce complete discovery responses.

JUNE 2, 2016 HEARING

At the hearing, xxxxx

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion For Order Compelling Meyer Wilson Co. LPA to Respond to Plaintiff's Interrogatories, Request for Production, and Sanctions filed by Stephen Ferlmann, the Plaintiff-Trustee, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion For Order Compelling Meyer Wilson Co. LPA to Respond to Plaintiff's Interrogatories, Request for Production, and Sanctions is
xxxxxxxxxxxxxxxxxxxxxxxxxxxx.

11. [15-90470-E-7](#) SUSAN FISCOE
[15-9056](#)
FARRAR V. FISCOE

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
10-6-15 [[1](#)]

Plaintiff's Atty: Dana A. Suntag
Defendant's Atty: David C. Johnston

Adv. Filed: 10/6/15
Answer: 11/26/15

Nature of Action:
Objection/revocation of discharge

Notes:
Continued from 3/17/16

JUNE 2, 2016 STATUS CONFERENCE

June 2, 2016 Status Conference

At the Status Conference ~~XXXXXXXXXXXXXXXXXXXXX~~.

Motion to Compel (hearing set for June 16, 2016)

The disallowed the exemption in the annuity and for all amounts in excess of \$75,000.00 in the Fairway Landing Property on April 13, 2016. (See below.) On May 19, 2016, Gary Farrar, the Chapter 7 Trustee ("Plaintiff-Trustee) filed a motion in the Chapter 7 bankruptcy case of Susan J. Fiscoe, Debtor, ("Defendant-Debtor") to compel the "turnover of money" from the Defendant-Debtor. 15-90470, Dckt. 75. The allegations in the motion are summarized as follows:

A. Delivery of physical possession of the Fairway Landing Property to the Plaintiff-Trustee.

B. Turnover of all post-petition payments Defendant-Debtor has received on the annuity for which the exemption has been disallowed in its entirety.

C. The monthly payments on the annuity are \$538.71, with it being alleged that Debtor received eleven post-petition payments, which total \$5,925.81, which is asserted to be property of the bankruptcy estate.

D. Plaintiff-Trustee has requested a turnover of the \$5,925.81 in post-petition annuity monies, but Defendant-Debtor has failed (or refused) to turn over the monies of the estate.

E. The Plaintiff-Trustee has received a lump sum payment of \$40,494.04 from the annuity company for the remaining value of the annuity.

F. The Plaintiff-Trustee has engaged a real estate broker to market and assist the Plaintiff-Trustee in the sale of the Fairway Landing

Property.

G. The Plaintiff-Trustee alleges that Defendant-Debtor refuses to grant access to the Fairway Landing Property to the Plaintiff-Trustee and his professionals, and Defendant-Debtor is interfering with the Plaintiff-Trustee's administration of this property of the estate and impairing the value thereof for the estate.

Several declarations are the provided in support of the motion to compel. The first is by William Eggeling, the real estate agent hired to market the Fairway Landing Property. 15-90470, Dckt. 77. He testifies that he has spoken with the Defendant-Debtor and she has told him: (1) she would not grant him access to the Property, (2) that her attorney had filed an appeal of the order denying her exemption, which was set for hearing on June 2, 2016 (no appeal or motion to vacate is in the file in the bankruptcy case), and (3) Defendant-Debtor was seeking the advice of a Florida attorney.

Objection to Claim of Exemption

On February 15, 2016, Debtor filed an Amended Schedule C which asserts a \$75,000.00 exemption pursuant to California Code of Civil Procedure § 704.100(c), stating that the full value of the annuity is necessary for the support of the Debtor. 15-90470, Dckt. 59.

On March 10, 2016, the Trustee filed an objection to the Amended Schedule C. Dckt. 61. The main thrust of the objection to the exemption claimed in the annuity is that California Code of Civil Procedure § 704.100(c) applies to "life insurance policies, and the asset at issue is an annuity. Citing *Estate of Short v. Payne (In re Payne)*, 323 B.R. 723, 728 (B.A.P. 9th Cir. 2005), for the proposition that annuities are not exempt under § 704.100(c). The Trustee further argues that the Debtor cannot show that the annuity is reasonably necessary for her support. The Trustee points to the Debtor having income of \$2,495.00 a month without the annuity.

The Trustee also objects to Debtor claiming a \$175,000.00 homestead exemption pursuant to California Code of Civil Procedure § 704.730.(a)(3)(A). The Trustee points out that Debtor was not 65 years of age or older when she filed this bankruptcy case.

On April 13, 2016, the court sustained the Plaintiff-Trustee's objections and disallowed the exemption in the annuity in its entirety and disallowed the exemption in the Fairway Landing Property in all value in excess of \$75,000.00. 15-90470, Dckt. 68.

SUMMARY OF COMPLAINT

The Complaint seeks to have the discharge of the Debtor denied pursuant to 11 U.S.C. §§ 727(a)(4)(D) [failure to turn over property of the Bankruptcy Estate], and (a)(2)(B) [removal of property of the estate]. The Trustee asserts that an annuity scheduled with an estimated value of \$75,000 (\$539 a month for the life of the Debtor) is not exempt.

SUMMARY OF ANSWER

The Defendant-Debtor responds, asserting that the asset is exempt pursuant to applicable Florida Estate Law.

FINAL BANKRUPTCY COURT JUDGMENT

The Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(a), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(J). Complaint 1, 2, Dckt. 1. In her answer, Susan Fiscoe, the Defendant-Debtor admits the allegations of jurisdiction and core proceedings. Answer 1, 2, Dckt. 11.

ISSUANCE OF PRE-TRIAL SCHEDULING ORDER

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 and 157(a), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(J). Complaint 1, 2, Dckt. 1. In her answer, Susan Fiscoe, the Defendant-Debtor admits the allegations of jurisdiction and core proceedings. Answer 1, 2, Dckt. 11. To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this is Adversary Proceeding are **related to proceedings, 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 claims and issues in this Adversary Proceeding referred to the bankruptcy court.**
- b. Initial Disclosures shall be made on or before **-----, 2016.**
- c. Expert Witnesses shall be disclosed on or before **-----, 2016,** and Expert Witness Reports, if any, shall be exchanged on or before **-----, 2016.**
- d. Discovery closes, including the hearing of all discovery motions, on **-----, 2016.**
- e. Dispositive Motions shall be heard before **-----, 2016.**
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at **----- p.m. on -----, 2016.**

12. [15-90284-E-7](#) ANTONIO/LUCILA AMARAL
[15-9057](#)
MCGRANAHAN V. SALDANA

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
10-21-15 [[1](#)]

Final Ruling: No appearance at the June 2, 2016 Status Conference is required.

Plaintiff's Atty: Anthony D. Johnston
Defendant's Atty: unknown

Adv. Filed: 10/21/15
Summons Reissued: 3/9/16
Answer: none

Nature of Action:
Recovery of money/property

The Status Conference is continued to 2:00 p.m. on July 7, 2016, to allow for the hearing on Plaintiff-Trustee's motion for entry of default judgment to be conducted.

Notes:
Continued from 3/17/16

Request for Entry of Default of Rafael Saldana filed 4/22/16 [Dckt 19]; Entry of Default filed 4/26/16 [Dckt 21]

[ADJ-1] Motion for Entry of Default Final Judgment Against Rafael Saldana, dba Saldana Bros. Hay filed 5/24/16 [Dckt 24], set for hearing 6/16/16 at 10:30 a.m.