

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Ronald H. Sargis**

Chief Bankruptcy Judge

Modesto, California

December 17, 2015 at 2:00 p.m.

1. [15-90207](#)-E-7 BOOTA BASI  
[15-9014](#)  
SINGH V. BASI

PRE-TRIAL CONFERENCE RE:  
COMPLAINT FOR  
NONDISCHARGEABILITY AND DAMAGES  
FOR LIBEL  
4-15-15 [[1](#)]

Final Ruling: No appearance at the December 17, 2015 Pre-Trial Conference is required.

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The Adversary Proceeding having been dismissed, the Pre-Trial Conference is removed from the Calendar.

Plaintiff's Atty: Trevor J. Zink  
Defendant's Atty: Lyle W. Johnson

Adv. Filed: 4/15/15  
Answer: 5/20/15

Nature of Action:  
Dischargeability - willful and malicious injury  
Objection/revocation of discharge  
Recovery of money/property - other  
Declaratory judgment  
Notes:  
Scheduling Order-  
Initial disclosures by 6/25/15  
Close of discovery 9/18/15  
Dispositive motions heard by 10/23/15

[OLG-3] Notice of Conditional Settlement filed 12/8/15 [Dckt 22]

December 17, 2015 at 2:00 p.m.

2. [13-91315-E-7](#) APPLEGATE JOHNSTON, INC. CONTINUED STATUS CONFERENCE RE:  
[15-9031](#) COMPLAINT  
MCGRANAHAN V. FRYER ROOFING 7-9-15 [[1](#)]  
CO., INC.

Final Ruling: No appearance at the December 17, 2015 Status Conference is required.

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The Adversary Proceeding having been dismissed, the Status Conference is removed from the Calendar.

Plaintiff's Atty: Daniel L. Egan  
Defendant's Atty: unknown

Adv. Filed: 7/9/15  
Answer: none  
Nature of Action:  
Recovery of money/property - preference

Notes:  
Continued from 10/1/15

[WFH-1] Chapter 7 Trustee Michael D. McGranahan's Request to Enter Default Against Defendant Fryer Roofing Co., Inc. filed 11/3/15 [Dckt 11]; Memorandum re: Default Papers filed by the court re error in filing 11/4/15 [Dckt 15]

3. [13-91315-E-7](#) APPLEGATE JOHNSTON, INC. CONTINUED STATUS CONFERENCE RE:  
[15-9043](#) COMPLAINT  
MCGRANAHAN V. RFI 7-13-15 [[1](#)]  
COMMUNICATIONS, INC.

Final Ruling: No appearance at the December 17, 2015 Status Conference is required.

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**The Adversary Proceeding having been dismissed, the Status Conference is removed from the Calendar.**

Plaintiff's Atty: Daniel L. Egan  
Defendant's Atty: unknown

Adv. Filed: 7/13/15  
Answer: none  
Nature of Action:  
Recovery of money/property - preference  
Notes:  
Continued from 10/1/15

4. [13-91315-E-7](#) APPLGATE JOHNSTON, INC.  
[15-9048](#)  
MCGRANAHAN V. WPCS  
INTERNATIONAL

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
7-13-15 [[1](#)]



Plaintiff's Atty: Daniel L. Egan  
Defendant's Atty: Douglas N. Akay

Adv. Filed: 7/13/15  
Answer: 11/16/15

Nature of Action:  
Recovery of money/property - preference

Notes:  
Continued from 10/1/15  
Answer and Jury Demand filed 11/16/15 [Dckt 9]

**SUMMARY OF COMPLAINT**

The complaint seeks to avoid pursuant to 11 U.S.C. § 547 from WPCS International \$78,091.94 in payments alleged to have been made within 90 days of the commencement of the bankruptcy case.

**SUMMARY OF ANSWER**

The Answer filed by Defendant WPS International - Suisun City, Inc. which responds to the allegations in the Complaint: (1) "The record speaks for itself; (2) "Conclusions of law for which no response is required; and (3) states seven affirmative defenses.

**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 (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 answer, WPCS International - Suisun City, Inc. fails to admit or deny the allegations in paragraphs 3 and 4 of the Complaint. Contrary to the contention that Defendant need not plead a dispute to an allegation of federal court subject matter jurisdiction, such a response is required. The court reads the response to be that defendant admits that federal court jurisdiction exists to determine the avoidance claims asserted under 11 U.S.C. § 547 and § 550.

Further, Defendant has an affirmative duty to "admit or deny that the proceeding is core or non-core." Fed. R. Bankr. P. 7012(b). The Answer appears to attempt to evade this simple pleading requirement by stating "Conclusion of law to which no response is required." Answer, ¶¶ 3 and 4;

Dckt. 9.

At the hearing, xx. To the extent that any issues in this Adversary Proceeding are "related to" matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.

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

- a. The Plaintiff alleges that jurisdiction 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 -----, 2015.
- 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.

5. [15-90717-E-11](#) **PLASMA ENERGY PROCESSES, INC.** **CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION**  
7-22-15 [[1](#)]

Debtor's Atty: Michael R. Germain

Notes:

Continued from 9/3/15

Operating Reports filed: 9/12/15, 10/15/15, 11/10/15

[MRG-2] Motion by Debtor-In-Possession for Authorization to Incur Secured Debt filed 9/3/15 [Dckt 25]; Order denying filed 10/5/15 [Dckt 36]

[MRG-3] Motion by Debtor-In-Possession for Authorization to Incur Secured Debt filed 10/7/15 [Dckt 37]; Order granting filed 10/27/15 [Dckt 46]

Notice of Noncompliance with Statutory Duties of Debtor and Requirements of United States Trustee filed 12/2/15 [Dckt 49]

6. [13-90323-E-12](#) **FRANCISCO/ORIANA SILVA** **STATUS CONFERENCE RE: VOLUNTARY PETITION**  
2-25-13 [[1](#)]

Debtors' Atty: Peter L. Fear

Notes:

Continued from 12/18/14

[PLF-9] Order granting motion to lease property filed 12/23/14 [Dckt 127]

[JPJ-2] Trustee's Objection to Allowance of Claim [Stanislaus County Tax Collector, Claim No. 25] filed 7/2/15 [Dckt 128]; withdrawn 8/13/15 [Dckt 140]

[JPJ-3] Trustee's Objection to Allowance of Claim [Stanislaus County Tax Collector, Claim No. 26] filed 7/2/15 [Dckt 132]; withdrawn 8/13/15 [Dckt 142]

[JPJ-4] Trustee's Objection to Allowance of Claim [Stanislaus County Tax Collector, Claim No. 27] filed 7/2/15 [Dckt 136]; withdrawn 8/13/15 [Dckt 144]

7. [12-91736-E-12](#) ANTONIO GOMES

STATUS CONFERENCE RE: VOLUNTARY  
PETITION  
6-20-12 [[1](#)]

Debtor's Atty: Thomas O. Gillis

Notes:

Continued from 12/18/14

[MNE-3] Trustee's Motion for Order Dismissing Under 11 U.S.C. Section 1208 filed 8/13/15 [Dckt 233]; withdrawn 9/29/15 [Dckt 242]; Order denying filed 10/5/15 [Dckt 246]

[TOG-17] Debtor's Ex Parte Notice of Dismissal of the Case filed 12/1/15 [Dckt 247]

8. [12-93049-E-11](#) MARK/ANGELA GARCIA

CONTINUED STATUS CONFERENCE RE:  
VOLUNTARY PETITION  
11-30-12 [[1](#)]

**Final Ruling: No appearance at the December 17, 2015 Status Conference is required.**

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<p>The Status Conference is continued to 2:00 p.m. on January 14, 2016, to be conducted in conjunction with the hearing for Approval of Disclosure Statement.</p>
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Debtors' Atty: Mark J. Hannon

Notes:

Continued from 8/20/15

Operating Reports filed: 9/15/15, 10/16/15, 11/14/15

[P&A-7] Motion to Approve Stipulation to Turn Over Rents Received and to Allow Direct Payment of Rents to G Street Investments, LLC filed 8/20/15 [Dckt 666]; Order granting filed 9/8/15 [Dckt 679]

[SND-2] Order Denying Motion for Conditional Approval of Disclosure Statement filed 8/31/15 [Dckt 673]; withdrawn 9/15/15 [Dckt 680]

[AP-1] Motion for Relief from Automatic Stay filed 10/30/15 [Dckt 684]; Order approving stipulation to continued hearing filed 11/23/15 [Dckt 703], set for hearing 1/14/16 at 10:00 a.m.

**December 17, 2015 at 2:00p.m.**

**- Page 7 of 30 -**

[SDN-3] Creditor YP Western Directory, LLC's Disclosure Statement filed 12/3/15 [Dckt 704], set for hearing 1/14/16 at 2:00 p.m.

[SDN-3] Creditor YP Western Directory, LLC's Plan filed 12/3/15 [Dckt 706]

9. [12-93049](#)-E-11 MARK/ANGELA GARCIA  
MJH-13

CONTINUED OBJECTION TO CLAIM OF  
UNITED STATES FIRE INSURANCE  
COMPANY, CLAIM NUMBER 19  
2-9-15 [[509](#)]

**Final Ruling:** No appearance at the December 17, 2015 Status Conference is required.

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<p><b>The Hearing on the Objection to Claim is continued to 2:00 p.m. on January 14, 2016, to be conducted in conjunction with the hearing for Approval of Disclosure Statement.</b></p>
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Debtors' Atty: Mark J. Hannon  
Creditor's Atty: Gregory M. Salvato; Gregory S. Day

Notes:

Pre-Evidentiary hearing continued from 9/3/15 to afford the parties a final opportunity to confirm a plan.

[SDN-3] Creditor YP Western Directory, LLC's Disclosure Statement filed 12/3/15 [Dckt 704], set for hearing 1/14/16 at 2:00 p.m.

[SDN-3] Creditor YP Western Directory, LLC's Plan filed 12/3/15 [Dckt 706]

10. [12-93049](#)-E-11 MARK/ANGELA GARCIA  
[13-9029](#)  
UNITED STATES FIRE INSURANCE  
COMPANY V. GARCIA ET AL

CONTINUED STATUS CONFERENCE RE:  
AMENDED COMPLAINT  
4-30-15 [[64](#)]

Final Ruling: No appearance at the December 17, 2015 Status Conference is required.

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**The Status Conference is continued to 2:00 p.m. on January 14, 2016, to be conducted in conjunction with the hearing for Approval of Disclosure Statement.**

Plaintiff's Atty: Gregory M. Salvato  
Defendant's Atty: Mark J. Hannon

Adv. Filed: 8/23/13  
Answer: 10/4/13

Amd. Cmplt. Filed: 4/30/15  
Answer: 5/20/15

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

Notes:

Continued from 8/20/15

11. [12-93049](#)-E-11 MARK/ANGELA GARCIA  
[15-9013](#)  
GARCIA ET AL V. G STREET  
INVESTMENTS, LLC. ET AL

CONTINUED STATUS CONFERENCE RE:  
AMENDED COMPLAINT  
5-30-15 [[14](#)]

Final Ruling: No appearance at the December 17, 2015 Status Conference is required.

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**The Status Conference is continued to 2:00 p.m. on January 14, 2016, to be conducted in conjunction with the hearing for Approval of Disclosure Statement.**

The Status Conference is continued to 2:00 p.m. on January

Plaintiff's Atty: Mark J. Hannon

Defendant's Atty:

David M. Wiseblood [G Street Investments, LLC]

Unknown [Iain MacDonald]

Adv. Filed: 4/10/15

Answer: none

Amd. Cmplt. Filed: 5/30/15

Answer: none

Nature of Action:

Validity, priority or extent of lien or other interest in property

Injunctive relief -imposition of stay

Subordination of claim or interest

Notes:

Continued from 9/3/15 to afford the parties this final opportunity to confirm a plan.

12. [09-94269-E-7](#) SUSHIL/SUSEA PRASAD  
[15-9018](#)  
FERLMANN V. PRASAD ET AL

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

**The Status Conference is continued to 2:00 p.m. on ~~XXXXXXXX~~,  
2016.**

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

Adv. Filed: 5/29/15  
Answer: none

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

Counterclaim Filed: 7/31/15 [demand for jury-Meyer Wilson Co., LPA]  
Answer: none

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

Crossclaim Filed: 10/22/15 [Transamerica Financial Advisors]  
First Amd. Crossclaim 11/12/15  
Answer: 12/8/15 [Sushil Prasad and Susea Prasad]

Counterclaim Filed: 10/22/15 [demand for jury-Meyer Wilson Co., LPA]  
Answer: 11/9/15 [Trustee]  
12/8/15 [Sushil Prasad and Susea Prasad]

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)

Notes:

Continued from 10/1/15

[MPB-1] Defendant Meyer Wilson Co., LPA's Notice of Motion and Motion to  
Withdraw Reference of Adversary Proceeding from Bankruptcy Court filed 10/22/15  
[Dckt 58]

Joint Status Conference Statement filed 12/10/15 [Dckt 74]

**SUMMARY OF JOINT STATUS REPORT**

In the Joint Status Report filed by the Parties, it is reported:

- A. Plaintiff-Trustee has filed and served the Second Amended Complaint. All Defendants have answered.
- B. Defendant Meyer Wilson filed a counter-claim against Plaintiff, seeking a declaration that the causes of action and resulting settlement proceeds from the Arbitration Claim are not property of the estate.
- C. Transamerica Financial Advisors, Inc. has filed cross claims against the Debtors for indemnification, misrepresentation, and restitution or unjust enrichment.
- D. Debtors have filed cross claims against Meyer Wilson asserting a claim for indemnification or contribution.
- E. Plaintiff-Trustee and Debtor have settled the claims asserted by the Trustee against the Debtor in the Second Amended Complaint. The court has previously approved that compromise.
- F. Meyer Wilson has filed a motion to have the United States District Court withdraw the reference for various grounds, including that Defendant/Counter-Claimant's demand for a jury trial.
- G. The Trustee reports that the parties will be requesting to have this matter sent out for early Alternative Dispute Resolution mediation.
- H. The Parties concur that no scheduling should occur in this case until after the District Court rules on the Motion to Withdraw the Reference.

13. [15-90470-E-7](#) SUSAN FISCOE  
[15-9056](#)  
FARRAR V. FISCOE

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

**Final Ruling: No appearance at the December 17, 2015 Status Conference is required.**

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

**The Status Conference is continued to 2:00 p.m. on February 4, 2016.** The court continues the status conference to allow the parties to litigate the issue of whether the exemption at issue should be disallowed. (Hearing on Plaintiff-Trustee's Objection to Claim of Exemption set for January 14, 2016.)

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

Nature of Action:  
Objection/revocation of discharge

Notes:

#### **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 its answer, Susan Fisco, the Defendant-Debtor admits the allegations of jurisdiction and core proceedings. Answer ¶¶ 1, 2, Dckt. 11. **To the extent that any issues in this Adversary Proceeding are "related to" matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.**

**PENDING OBJECTION TO CLAIM OF EXEMPTION**

In Defendant-Debtor's bankruptcy case, the Plaintiff-Trustee has filed an Objection to the Claim of Exemption. 15-90470, Dckt. 39. The hearing on the Objection to Claim of Exemption is scheduled for January 14, 2016.

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 its answer, Susan Fisco, the Defendant-Debtor admits the allegations of jurisdiction and core proceedings. Answer ¶¶ 1, 2, Dckt. 11. **To the extent that any issues in this Adversary Proceeding are "related to" matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.**
- b. Initial Disclosures shall be made on or before December -----, **2015.**
- 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.**

14. [14-90473-E-7](#) ROBERT WOJTOWICZ AND  
[14-9023](#) SHERRI HERTZIC-WOJTOWICZ  
HERTZIC-WOJTOWICZ V. IRM  
CORPORATION ET AL

CONTINUED STATUS CONFERENCE RE:  
AMENDED COMPLAINT  
9-29-15 [[46](#)]

Plaintiff's Atty: Shane Reich  
Defendant's Atty: Jamie Dreher

**The Status Conference is continued to 2:00 p.m. on ~~XXXXXXXXXXXX~~,  
2016.**

Adv. Filed: 7/11/14  
Answer: none

Nature of Action:  
Recovery of money/property

Notes:

Continued from 10/1/15 to allow Plaintiff additional time to investigate the identity of the successor entity to the judgment creditor.

#### **SUMMARY OF COMPLAINT**

The First Amended Complaint seeks to avoid a pre-petition payment pursuant to 11 U.S.C. § 547, which is asserted to be exempt pursuant to 11 U.S.C. § 522(g) and (h). The amount at issue is \$232.41. This remains from a larger amount, \$832.30, which Plaintiff-Debtor sought to recover from Defendant.

#### **SUMMARY OF ANSWER**

Defendant JCM Partners, LLC denies specific allegations in the First Amended Complaint, as well as asserting 13 affirmative defenses.

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

The Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157, and that this is a core proceeding (without referencing the applicable code section. First Amended Complaint ¶ 1, Dckt. 46. In its answer, Defendant JCM Partners, LLC asserts,

"1. Paragraph 1 of the FAC contains legal assertions to which no response is required. However, to the extent a response is required, JCM denies the allegations of Paragraph 1."

Answer, ¶ 1; Dckt. 51.

Contrary to the contention of Defendant, a lack of subject matter or personal jurisdiction must be asserted in an answer. Fed. R. Civ. P. 12(b)(1)

and (2); Fed. R. Bank. P. 7012(b). In addition, the answer must affirmatively plead whether the matter is a core or non-core proceeding, and if non-core, whether defendant consents to the bankruptcy judge issuing all final orders and final judgment therein. Fed. R. Bankr. P. 7012(b).

Here, Defendant asserts that no response is required. Defendant further equivocates by merely making a general denial of whatever is alleged in paragraph 1. This does not comply with the basic answer pleading requirements.

To avoid any confusion, the court continues the Status Conference and Orders the Defendant to file a supplemental memorandum stating the legal authority upon which it is proper to plead that no response to the allegations of federal court jurisdiction and core/non-core matter status is proper.

The provisions of Federal Rule of Civil Procedure 12(b)-(i) apply to a responsive pleading filed in an Adversary Proceeding. Fed. R. Bank. P. 7012. This includes affirmatively stating any counter contention that the federal court does not have subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1). Additionally, Federal Rule of Bankruptcy Procedure 7012(b) requires that "A responsive pleading shall admit or deny an allegation that the proceeding is core or non-core. If the response is that the proceeding is non-core, it shall include a statement that the party does or does not consent to entry of final orders or judgment by the bankruptcy judge."

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 Status Conference in this Adversary Proceeding having been continued, Defendant JCM Partners, LLC asserting that it need not plead in its answer a response to the allegations of federal court jurisdiction and the core/non-core nature of the matter before the court, and good cause appearing,

**IT IS ORDERED** that the Status Conference is continued to 2:00 p.m. on **January 14, 2016**. No Telephonic Appearance permitted for any party or counsel for any party.

**IT IS FURTHER ORDERED** that on or before **December 30, 2015**, JCM Partners, LLC shall file and serve a supplemental points and authorities addressing the legal basis for asserting that failing to plead and respond to allegations of federal court jurisdiction and the core/non-core status of the matters before the court (Fed. R. Civ. P. 12(b) and Fed. R. Bankr. P. 79012(b)) are warranted by existing law or by nonfrivolous argument for the extension, modification, or reversal fo existing law or the establishment of new law (Fed. R. Bankr. P. 9011). Responses, if any, shall be filed and served on or before **January 7, 2016**.

15. [12-92479-E-12](#) DAVID/ESPERANZA AGUILAR STATUS CONFERENCE RE: VOLUNTARY  
PETITION  
9-17-12 [[1](#)]

Debtors' Atty: Nelson F. Gomez

Notes:

Continued from 12/23/14

Order Confirming Chapter 12 Plan Filed September 24, 2014. Dckt. 79.

16. [15-90284-E-7](#) ANTONIO/LUCILA AMARAL STATUS CONFERENCE RE: COMPLAINT  
[15-9057](#) 10-21-15 [[1](#)]  
MCGRANAHAN V. SALDANA

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

Adv. Filed: 10/21/15

Answer: none

Nature of Action:

Recovery of money/property - preference

Notes:

**SUMMARY OF COMPLAINT**

The Plaintiff-Trustee seeks to avoid pursuant to 11 U.S.C. § 547 transfers totaling \$25,614.00. The Trustee asserts that jurisdiction exists pursuant to 28 U.S.C. §§ 151, 157, and 1334. Further, that this is a core proceeding.

**SUMMARY OF ANSWER**

No answer or other responsive pleading has been filed.

17. [14-91197-E-7](#)      NICOLAS PEREZ AND MARIA      CONTINUED ORDER TO APPEAR AND  
RHS-1                    MOSQUEDA DEPEREZ                    ORDER TO SHOW CAUSE  
7-14-15 [[102](#)]

**No Tentative Ruling:** The Order to Appear and Order to Show Cause was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).**

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Local Rule 9014-1(f)(3) Motion.

Correct Notice Provided. The Bankruptcy Notice Center states that the Order and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Ana Gonzales, and Office of the United States Trustee on July 16, 2015. By the court's calculation, 35 days' notice was provided.

The Order to Appear and Order to Show Cause was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

**The Order to Appear and Order to Show Cause is XXXXXX**

On July 14, 2015, the court issued an Order to Appear and Order to Show Cause. Dckt. 102. In the order, the court ordered the following:

**IT IS ORDERED** that Ana Gonzales, aka Anna Gonzales, aka Anna Jaimes, and aka Anna Jaimes-Gonzales, the bankruptcy petition preparer; Nicolas Perez; and Maria DePerez, and each of them, shall appear in person at the hearing on this Order which shall be conducted at 10:30 a.m. on August 20, 2015. No telephonic appearances are permitted for each of these persons ordered to appear.

**IT IS FURTHER ORDERED** that:

- A. On or before July 24, 2015, the Debtors, Chapter 7 Trustee, U.S. Trustee, and any other parties in interest shall file any further pleadings they believe appropriate, if any, concerning the conduct of Ana Gonzales aka Anna Gonzales aka Anna Jaimes aka Anna Jaimes-Gonzales in the bankruptcy case.
- B. On or before August 7, 2015, Ana Gonzales, aka Anna Gonzales, aka Anna Jaimes, and aka Anna Jaimes-Gonzales, shall file any Response Pleadings she deems appropriate, including, without limitation, evidence of:
1. The Debtors, and each of them, understanding and review of the Petition, Schedules, Statement of Financial Affairs, and related documents prepared by Ana Gonzales, aka Anna Gonzales, aka Anna Jaimes, and aka Anna Jaimes-Gonzales.
  2. The Debtors' selection of the exemptions claimed on Schedule C prepared by Ana Gonzales aka Anna Gonzales aka Anna Jaimes aka Anna Jaimes-Gonzales.
  3. The actions taken by Ana Gonzales, aka Anna Gonzales, aka Anna Jaimes, and aka Anna Jaimes-Gonzales to reasonably believe in good faith that the Debtors:
    - a. understood the information in the documents prepared by Ana Gonzales aka Anna Gonzales, aka Anna Jaimes, and aka Anna Jaimes-Gonzales in this case;
    - b. confirmed that information in such documents was true and correct;
    - c. understood that they were stating such information in the documents as true and correct under penalty of perjury;
    - d. made the decision of what exemptions to claim on Schedule C; and
    - e. understood all of the information which was required to be provided to truthfully and accurate complete the Petition, Schedules, Statement of Financial Affairs, and the related documents filed in this bankruptcy case.
  4. The policies and procedures Ana

Gonzales, aka Anna Gonzales, aka Anna Jaimes, and aka Anna Jaimes-Gonzales has in place to reasonably provide for consumer debtors understanding what information is required; that the information must be complete, true, and correct; that they understand they are signing the documents under penalty of perjury; and that Ana Gonzales, aka Anna Gonzales, aka Anna Jaimes, and aka Anna Jaimes-Gonzales cannot provide them with legal advice (including the selection of exemptions).

- C. On or before August 14, 2015, Replies, if any, to the Responses of Ana Gonzales, aka Anna Gonzales, aka Anna Jaimes, and aka Anna Jaimes-Gonzales shall be filed and served.

On August 28, 2014, Nicolas Perez and Maria Mosqueda DePerez ("Debtors") commenced this voluntary Chapter 7 case ("Chapter 7 Case") in pro se. Dckt. 1. No attorney signed the Petition, and a non-attorney bankruptcy petition preparer, Ana Gonzales, aka Anna Gonzales, aka Anna Jaimes and aka Anna Jaimes-Gonzales, ("Bankruptcy Petition Preparer"), is reported to have been paid \$125.00 for preparing the Petition, Schedules, Statement of Financial Affairs, and supporting documents. Id. at 3, 30, 34, and 41. The Debtors provide the following information under penalty of perjury in their Petition, Schedules, and Statement of Financial Affairs:

- A. They both reside at 1613 7th Street, Hughson, California ("7th Street Property"). Petition, Id. at 1.
- B. Debtors own only one piece of real property, the 7th Street Property. Schedule A, Id. at 10.
- C. Debtors have only one creditor with a secured claim, "Wells Fargo Mortgage," which claim is secured by the 7th Street Property. Schedule D, Id. at 15.
- D. Debtor Nicolas Perez is unemployed and has \$0.00 average monthly income. Schedule I, Id. at 26.
- E. Debtor Maria DePerez is employed, within monthly gross income of \$2,560.00. Id.
- F. No other income is listed by the Debtors. Id.
- G. Debtors list having \$26,774.00 in income in 2013 and \$25,980.00 in income in 2012. Though the bankruptcy case was filed August 27, 2014, no income information is provided for 2014. Statement of Financial Affairs ("SOFA") Question 1, Id. at 31-32.

On the Chapter 7 Statement of Current Monthly Income, Debtors state that their income for the six months prior to the commencement of the case is an annualized amount of \$25,440.00. Id. at 42-44. Further, that this is less

than the applicable median income of \$29,685.00 for a family of three persons and the presumption of abuse does not arise. Id.

The Schedules prepared by the Bankruptcy Petition Preparer include Schedule C in which the Debtors, under penalty of perjury and subject to Federal Rule of Civil Procedure 9011, claim the following exemptions:

Asset	Statutory Basis	Amount
Cash on Hand	Cal. C.C.P. § 703.140(b)(5)	\$165
Checking Account	Cal. C.C.P. § 703.140(b)(5)	\$397
Household Furnishings	Cal. C.C.P. § 703.140(b)(3)	\$1,950
Reading Material/Bible	Cal. C.C.P. § 703.140(b)(3)	\$100
Clothing/Shoes etc.	Cal. C.C.P. § 703.140(b)(3)	\$1,600
Fashion Jewelry/Access.	Cal. C.C.P. § 703.140(b)(3)	\$100
1998 Ford F-150	Cal. C.C.P. § 703.140(b)(5)	\$2,450
2003 P.T. Cruiser	Cal. C.C.P. § 703.140(b)(5)	\$1,400
Desk & Computer	Cal. C.C.P. § 703.140(b)(5)	\$225
Primary Residence	Cal. C.C.P. § 703.140(b)(2)	\$1
Household Misc Yard, Tools	Cal. C.C.P. § 703.140(b)(5)	\$350

Dckt. 1 at 14.

After the First Meeting of Creditors, the Chapter 7 Trustee issued a Notice of Assets in this case. November 5, 2014 Docket Entry Report. On December 12, 2015, the Trustee filed a motion to employ counsel. Dckt. 15. On November 26, 2014, Modesto Irrigation District filed a Motion to Extend Deadlines for the filing of objections to discharge and to determine nondischargeability of debt. Dckt. 18. That Motion alleges that Debtor DePerez held title to real property commonly known as 4904 Ebbett Way which was transferred to a Jose Luis Moctezum on June 19, 2013, for no consideration. No disclosure of the Ebbett Way Property was made in the Schedules or the transfer disclosed on the Statement of Financial Affairs.

The Chapter 7 Trustee filed his own motion to extend the deadline to objection to discharge. Dckt. 27. The Trustee's motion further alleges that Debtor DePerez testified at the first meeting of creditors that the Ebbett Way Property had been transferred to her brother-in-law approximately fourteen months prior to the commencement of the Debtor's Chapter 7 case.

The Chapter 7 Trustee then filed two adversary proceedings to recover real property transferred by Debtors to third parties. In Adversary Proceeding 14-9030 the Chapter 7 Trustee sought to avoid the transfer of the Ebbett Way Property. On March 11, 2015, the Chapter 7 Trustee filed a notice of dismissal of the Adversary Proceeding, stating, "With the assistance of new counsel, Thomas Gillis, secured the voluntary transfer of the real property [Ebbett Way] back to Maria Mosqueda DePerez..." 14-9030, Dckt. 16.

In the second adversary proceeding the Chapter 7 Trustee sought to avoid the transfer by Debtors of the real property commonly known as 136 Algen Avenue." 14-9031. In this second Adversary Proceeding the Chapter 7 Trustee filed a dismissal, stating, "With the assistance of new counsel, Thomas Gillis, secured the voluntary transfer of the real property [Ebbett Way] back to Maria Mosqueda DePerez..." 14-9031, Dckt. 16.

The court granted the Trustee's Motion to Extend the Deadline to Object to Discharge. Order, Dckt. 56. On April 27, 2015, the Chapter 7 Trustee filed a Motion to Compel Debtors to Turnover Property of the Estate consisting of the 490 Ebbett Way Property and the 136 Algen Avenue Property. Dckt. 59.

Debtors opposed the Chapter 7 Trustee's Motion to Turnover Property of the Estate, asserting that the Chapter 7 case had been filed by mistake. Response, Dckt. 68. Debtors stated that they would be filing a motion to dismiss the Chapter 7 case. Further, Debtors argue that they filed and prosecuted the Chapter 7 case in pro se, and did not understand the requests of the Trustee, until they engaged the service of Thomas Gillis. On June 11, 2015, the court filed its order requiring Debtors to turnover both real properties and related personal property to the Trustee by June 19, 2015. Order, Dckt. 81.

On July 7, 2015, Debtor Nicholas Perez, in pro se, filed a Motion to Dismiss the bankruptcy case. Dckt. 92. It appears identical to the Motion to Dismiss that Thomas Gillis filed for Debtor Maria DePerez on June 9, 2015. Dckt. 75. In the DePerez Motion to Dismiss, it is asserted,

- A. Debtors have disposable income of \$248.50 a month, and asserts that this "exceeds eligibility for Chapter 7."
- B. Debtors assert that over a five-year period, they would have \$10,000.00 of disposable income.
- C. Debtor Nicholas Perez is unemployed and uneducated (having only attended through the second grade in Mexico).
- D. Co-Debtor Maria DePerez is also asserted to being uneducated, and unable to read or write English.
- E. Debtors obtained a \$100,000.00 life insurance payment when their son died in 2008.
- F. Debtors (who are stated to be uneducated) then used the \$100,000.00 to invest in two rental properties located in Modesto, California.
- G. Co-Debtor was suffering from depression when the Chapter 7 Case was filed.
- H. Debtors did not know that the tenant in the Everett Street Property was growing marijuana on the property and was stealing electricity from Modesto Irrigation District.
- I. When Debtors were served with a complaint filed by Modesto Irrigation District they state that they were told by an

unidentified employee of the District to "file some papers" and that the employee recommended a "typing service."

- J. Debtors went to a paralegal who prepared the bankruptcy for Debtors. They further state that the documents were filed out in pen and not explained to them.
- K. Debtors further assert that they did not read or understand what they were signing.

Dckt. 75.

On June 9, 2015, the declaration of Debtor Maria DePerez was filed in support of the Motion to Dismiss. Dckt. 77. In her Declaration, Ms. DePerez purports to state under penalty of perjury:

- A. She is uneducated, having attended school only through the sixth grade in Mexico.
- B. She is not able to read or write English.
- C. The Co-Debtor Nicholas Perez is also uneducated, having attended school only through the second grade in Mexico. Further, the Co-Debtor is not employed.
- D. Debtor and Co-Debtor have been "separated" for eight years.
- E. Debtors used the \$100,000.00 in life insurance proceeds to purchase two rental properties in Modesto, California.
- F. Ms. DePerez states that she is under medical treatment for depression arising from several different sources.
- G. Debtors were not aware that their tenant for the Everett Street Property was using it for illegal purposes and was stealing electricity.
- H. She states that she and the Co-Debtor never reviewed the bankruptcy documents filed with the court, and did not understand them when she signed them [under penalty of perjury].
- I. Finally, Ms. DePerez goes so far as to provide her personal legal conclusion that "We are not eligible for Bankruptcy."

Declaration, Dckt. 77.

A declaration, prepared by counsel for Ms. DePerez, has also been filed by Co-Debtor Nicholas Perez. Dckt. 78. Mr. Perez states:

- A. Mr. Perez is uneducated, having only attended through second grade in Mexico.
- B. He is disabled and unable to work.

- C. The bankruptcy petition preparer did not explain the documents and Mr. Perez did not know what he was signing.

Declaration, Dckt. 78.

This Motion to Dismiss and the testimony under penalty of perjury in the Debtors' declarations raise some very serious issues concerning the conduct of not only the Debtors, but the Bankruptcy Petition Preparer who assisted the Debtors in filing the bankruptcy case. Taken at face value, the Bankruptcy Petition Preparer has engaged in the business practices of: (1) being paid by less sophisticated consumer debtors for bankruptcy petitions and other documents to be filed with the court; (2) not having the less sophisticated consumer debtors read the documents prepared before signing them and filing them with the court; (3) not having a good faith belief that the less sophisticated consumer debtors understand what is stated in the documents or that the less sophisticated consumer debtors confirm that the information is accurate; and (4) preparing inaccurate documents for filing for with the court.

**BANKRUPTCY PETITION PREPARER IN THIS CASE  
AND DUTIES TO DEBTORS AND COURT**

The Debtors report, and the Bankruptcy Petition Preparer confirms on the documents filed in this case, that Anna Gonzales [though the printed name and signature are almost illegible on the documents filed in this case] provided the services of a bankruptcy petition preparer for the Debtors. Congress has statutorily defined a "bankruptcy petition preparer" in 11 U.S.C. § 110(a) as follows,

(a) In this section--

(1) "bankruptcy petition preparer" means a person, other than an attorney for the debtor or an employee of such attorney under the direct supervision of such attorney, who prepares for compensation a document for filing; and

(2) "document for filing" means a petition or any other document prepared for filing by a debtor in a United States bankruptcy court or a United States district court in connection with a case under this title.

This statutory definition is very broad in scope, excluding only an attorney for a debtor or an employee of, and directly supervised by, that attorney for a debtor.

The bankruptcy petition preparer must sign and print the preparer's name and address on the document which was prepared for a debtor to be filed with a United States bankruptcy court or United States district court. 11 U.S.C. § 110(b)(1). In addition, the bankruptcy petition preparer shall provide the debtor a written notice that a bankruptcy petition preparer is not an attorney and may not practice law or give legal advice. The written notice must be signed by the debtor and, under penalty of perjury, by the bankruptcy petition preparer. 11 U.S.C. § 110(b)(2).

The bankruptcy petition preparer is also required to provide an

identifying number, after the preparer's signature, which identifies the individual who prepared the document. This identifying number is the Social Security account number of each individual bankruptcy petition preparer, or the officer, principal, responsible person, or partner if the bankruptcy petition preparer is not an individual. 11 U.S.C. § 110(c).

Congress created specific limitations on the services provided by, and the conduct of, a bankruptcy petition preparer.

- A. A bankruptcy petition preparer shall not execute any document on behalf of a debtor.
- B. A bankruptcy petition preparer may not offer a potential bankruptcy debtor any legal advice, including, without limitation,
  1. whether-
    - a. to file a petition under this title; or
    - b. commencing a case under chapter 7, 11, 12, or 13 is appropriate;
  2. whether the debtor's debts will be discharged in a case under this title;
  3. whether the debtor will be able to retain the debtor's home, car, or other property after commencing a case under this title;
  4. concerning-
    - a. the tax consequences of a case brought under this title; or
    - b. the dischargeability of tax claims;
  5. whether the debtor may or should promise to repay debts to a creditor or enter into a reaffirmation agreement with a creditor to reaffirm a debt;
  6. concerning how to characterize the nature of the debtor's interests in property or the debtor's debts; or
  7. concerning bankruptcy procedures and rights.

11 U.S.C. § 110(e). (All of the above collectively referred to as "Prohibited Services" by the court in this Order to Appear and Order to Show Cause.) The bankruptcy petition preparer is also prohibited from using the word "legal" or any similar term in any advertisements, or advertise under any category that includes the word "legal" or any similar term. 11 U.S.C. § 110(f).

This statute further provides that the Supreme Court by rule or the Judicial Conference of the United States by guidelines, may set the maximum allowable fee chargeable by a bankruptcy petition preparer. A bankruptcy

petition preparer is required to notify a debtor of any such maximum amount before preparing any document for filing for that debtor or accepting any fee from, or on behalf of, that debtor. 11 U.S.C. § 110(h)(1). The bankruptcy petition preparer's declaration shall include a certification that the bankruptcy petition preparer provided notification of the maximum fee set by rule or guidelines which may be charged by the bankruptcy petition preparer. In the Eastern District of California the maximum fee charged by a bankruptcy petition preparer is \$125.00. *Guidelines Pertaining to Bankruptcy Petition Preparers in Eastern District of California Cases*, dated October 20, 1997, ¶ 2.

A bankruptcy petition preparer's disclosure of fees is not limited to only those fees which the bankruptcy petition preparer allocates for the preparation of documents to be filed with the court. A bankruptcy petition preparer must also file a declaration under penalty of perjury disclosing any fee received from or on behalf of a debtor within 12 months immediately prior to the filing of the case, and any unpaid fee charged to the debtor. 11 U.S.C. § 110(h)(2).

If a bankruptcy petition preparer charges any fee in excess of the value of any services rendered by the bankruptcy petition preparer during the 12-month period immediately preceding the date of the filing of the petition, or which is in violation of any rule or guideline, the court "shall" (not "may") disallow and order the immediate turnover of such fee, in excess of the amount permitted, to the bankruptcy trustee. 11 U.S.C. § 110(h)(3)(A). The consequences are more severe for a bankruptcy petition preparer determined by the court to have engaged in any Prohibited Services. All fees charged by such bankruptcy petition preparer engaging in Prohibited Services "may" (not "shall") be forfeited. 11 U.S.C. § 110(h)(3)(B).

A bankruptcy petition preparer who violates § 110 or commits any act that the court finds to be fraudulent, unfair, or deceptive "shall" (not "may") be ordered by the court to pay to the debtor,

- A. the debtor's actual damages;
- B. the greater of-
  1. \$ 2,000; or
  2. twice the amount paid by the debtor to the bankruptcy petition preparer for the preparer's services; and
- C. Reasonable attorneys' fees and costs in moving for damages under 11 U.S.C. § 110.

11 U.S.C. § 110(i)(1). If the trustee or creditor moves for damages on behalf of the debtor under this subsection, the bankruptcy petition preparer "shall" (not "may") be ordered to pay the movant the additional amount of \$ 1,000.00, plus reasonable attorneys' fees and costs. 11 U.S.C. § 110(i)(2).

Congress provides in 11 U.S.C. § 110(l)(1) and (2) additional fines in an amount of not more than \$500.00 which "may" (not "shall") be imposed for each Prohibited Service at issue in this Motion. In addition, the amount of such fines "shall" (not "may") be trebled if the court finds that a bankruptcy

petition preparer,

- A. advised the debtor to exclude assets or income that should have been included on applicable schedules;
- B. advised the debtor to use a false Social Security account number;
- C. failed to inform the debtor that the debtor was filing for relief under this title; or
- D. prepared a document for filing in a manner that failed to disclose the identity of the bankruptcy petition preparer.

11 U.S.C. § 110(1)(1),(2). Fines imposed under § 110(1) shall be paid to the United States Trustee, who shall deposit an amount equal to such fines in the United States Trustee Fund.

The Ninth Circuit Court of Appeals addressed issues relating to bankruptcy petition preparers in *Frankfort Digital Servs. v. Kistler (In re Reynoso)*, 477 F.3d 1117 (9th Cir. 2007). Services provided by bankruptcy petition preparers are strictly limited to typing bankruptcy forms. *Id.* at 1125. Services or goods which do more than merely fill in forms with information provided by the debtor exceed the permitted activities for a bankruptcy petition preparer. In Frankfort, the Court of Appeals affirmed the determination that software provided by a bankruptcy petition preparer which chose the exemptions to be used by the debtor was similar to other goods and services provided by a bankruptcy petition preparer which made decisions for the debtor (rather than merely filing out documents with information from the debtor) that violate 11 U.S.C. § 110. This includes providing software programs to consumers which "determines" the exemptions that the consumer should elect for his or her bankruptcy schedules. There is not even a requirement that the bankruptcy petition preparer meet or interact with the consumer for the input of the information or use of the software to generate the documents for filing. *Id.* at 1123-24.

#### **AUTHORITY OF COURT TO ADDRESS CONDUCT OF PERSONS IN THE COURT**

Bankruptcy courts have jurisdiction and the authority to impose sanctions, even when the bankruptcy case itself has been dismissed. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384,395 (1990); *Miller v. Cardinale (In re DeVille)*, 631 F.3d 539, 548-549 (9th Cir. 2004). The bankruptcy court judge 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 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 filed 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 in the bankruptcy court. *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 and power to discipline attorneys who appear before the court. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991); see *Price v. Lehitine*, 564 F. 3d at 1058.

The primary purpose of a civil contempt sanction is to compensate losses sustained by another's disobedience of 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 federal court's authority to regulate the practice of law is broader, allowing the court to punish bad faith or willful misconduct. *Price v. Lehitine*, 564 F.3d at 1058. However, the bankruptcy court cannot issue punitive sanctions pursuant to its power to regulate the attorneys or parties appearing before it. *Id.* at 1059.

This power has been augmented by Congress in 11 U.S.C. § 110. Congress has specifically provided for federal judges to address, sanction, and correct conduct of bankruptcy petition preparers. This includes the disgorgement of fees, and imposition of mandatory and discretionary statutory fines and fees.

**ISSUES RAISED BY DEBTORS' TESTIMONY  
UNDER PENALTY OF PERJURY**

Taken at face value, the testimony of the Debtors is that the Bankruptcy Petition Preparer accepted payment of \$125.00 to prepare the Petition, Schedules, Statement of Financial Affairs, and related documents to commence this bankruptcy case, which the Debtors did not review, signed without reading, and had filed without knowing what information was stated therein. Further, Debtors' testimony is that they did not understand what was in these documents, and implicitly therein, that the Bankruptcy Petition Preparer did not make any effort to have the information translated or presented in a manner for Debtors to understand.

Taken at face value, Debtors have no idea of the exemptions claimed on Schedule C prepared by the Bankruptcy Petition Preparer. The selection of exemptions is a legal decision, one which cannot be performed by a bankruptcy petition preparer.

**TRUSTEE'S RESPONSE**

Michael McGranahan, the Chapter 7 Trustee, filed a response to the Order on July 17, 2015. Dckt. 107. The Trustee states that the Debtors have not complied with the deadline to turnover information, rents, and the subject properties 4904 Ebbett Way, Modesto, California, and real property at 136 Algen Ave., Modesto, California.

The Trustee states that the Debtors have only provided only one rent payment for the Algen property for the period of June 2015. Additionally, Debtor Maria Mosqueda DePerez provided an unsworn and unfiled document entitled "Accounting of Debtor for Funds Received (\$600 per month)." The Trustee states that no back up information was provided nor have cancelled checks as requested been provided.

Debtor Mosqueda De Perez's entry on October 15, 2014 to the Accounting reflects that Debtors have paid their paralegal to do the bankruptcy between the period of "Aug-Mar" a sum of \$2,000.00 without court authorization which conflicts with the statements on the Statement of Financial Affairs.

Lastly, the Trustee states that he has learned that the Debtors continue to interfere with the Trustee's efforts to collect ongoing rent concerning the Ebbett Way property in that the tenants at the establishment have apparently been contacted by Debtor Maria Mosqueda DePerez and they do not want to turnover perspective rents to the Trustee.

**AUGUST 20, 2015 HEARING**

At the hearing, the U.S. Trustee reported that in 2012 that the petition preparer was not revealing her identity. On June 13, 2012, Judith Holtze, he wrote the petition preparer, and then met with her about properly completing the schedules as a petition preparer. They met and had positive meetings. They have not had other issues since that time, until the Order to Show Cause was issued.

Counsel for Debtor reports that he has filed a copy of the receipt for \$600.00 given by the Petition Preparer. The client states that the total payments were \$2,000.00. The Debtor is requesting copies of the checks from her bank.

The Trustee reports that the Trustee is investigating, concerned contentions that the Schedules are not accurate.

Anna Jaimes-Gonzales asserted that she had been requested to work, and re-work, the documents a number of times, including the Debtors originally having the documents prepared for a single debtor, and then changing to a joint debtor.

The court continued the hearing to 2:00 p.m. on December 17, 2015 to allow the U.S. Trustee and parties in interest to investigate this matter, communicate with all parties in interest, and conduct discovery, and report to the court how they intend to proceed.

**UNITED STATES TRUSTEE'S MOTION FOR ASSESSMENT OF FINES AGAINST AND FOR FORFEITURE OF FEES BY ANNA JAIMES GONZALES**

On November 18, 2015, the US Trustee filed a Motion for Assessment of Fines Against, and for Forfeiture of Fees by, Anna Jaimes Gonzales. Dckt. 195. The Motion seeks: (1) fines in the amount of \$500.00 and (2) forfeiture of fees in the amount of \$800.00.

On December 17, 2015, the court granted the US Trustee's Motion and imposed fines and forfeiture of fees on Anna Jaimes Gonzales.

**DECEMBER 17, 2015 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 Order to Appear and Order to Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that **XXXXXX**.