

FILED

April 12, 2022

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA

In re:

Case No. 19-27507-A-7

KENNETH LEE STEERS, JR. and  
LIELANIE OLIVIA STEERS, INC.,

Debtors.

AMERISOURCE FUNDING, INC.,

Adv. No. 20-02027-A

Plaintiff,

FEC-4

V.

KENNETH LEE STEERS, JR. and  
LIELANIE OLIVIA STEERS,

Defendants.

Memorandum

1 Parties must attend the pretrial conference. Fed. R. Bankr. P.  
2 16(c)(1), *incorporated by* Fed. R. Bankr. P. 7016; Am. Scheduling Order  
3 §§ 1.0, 8.0, ECF No. 38. This court ordered the counsel for each  
4 party to attend the pretrial conference scheduled for March 29, 2022.  
5 Am. Scheduling Order §§ 1.0, 8.0. Neither party appeared, through  
6 counsel or otherwise, at that date and time.

7 This court issued an order to show cause for sanctions. Order,  
8 ECF No. 43. The order stated:

9 Amerisource Funding, Inc. and Attorneys Timothy Flaherty  
10 and/or Kevin Morse and Kenneth and Lielanlie Steers and  
11 Attorney Nicholas Lazzarini are ordered to show cause why  
12 sanctions, including dismissal of the complaint and/or  
monetary sanctions, and/or strike the answer for failure to  
appear at the status conference, Fed. R. Civ. P. 16(f),  
incorporated by Fed. R. Bankr. P. 7016.

13 ...

14 [N]ot later than April 6, 2022, the respondents may file  
15 written opposition to the order to show cause and any such  
16 opposition shall be supported by specific and admissible  
evidence as to why this case should not be dismissed and/or  
monetary sanctions imposed.

17 [A]bsent good and sufficient reason supported by admissible  
18 evidence, the court will resolve the order to show cause  
without further notice or hearing.

19 Order ¶¶ 1(A), (C), (D).

20 On April 6, counsel for the parties filed a joint response.  
21 Joint Response, ECF NO. 48. It was unsupported by declaration or  
22 other admissible evidence. In November 2021, the parties "exchanged  
23 fully executed settlement agreements" and exchanged a draft  
24 stipulation for settlement of the adversary proceeding. Joint  
25 Response 2:8-17. The stipulation for dismissal was not filed with the  
26 court and, on March 29, 2022 (four months after the parties executed a  
27 settlement agreement), neither party appeared at the pretrial  
28 conference.

1 Failure to attend the pretrial conference is a basis for monetary  
2 sanctions. Fed. R. Civ. P. 16(f)(1)(A), *incorporated by* Fed. R.  
3 Bankr. P. 7016. Bad faith is not required for imposition of sanctions  
4 and negligence support the imposition of sanctions. *Ayers v. City of*  
5 *Richmond*, 895 F.2d 1267, 1270 (9th Cir. 1990) (that the "date slipped  
6 by me" is insufficient).

7 Sanctions are appropriate here. First, notwithstanding clear  
8 instructions to the contrary, the response is unsupported by  
9 admissible evidence. Second, and more importantly, the respondents  
10 stated reason, i.e., "it was an unfortunate collective oversight  
11 between counsel," is insufficient. *Ayers*, 895 F.2d at 1270. Third,  
12 and finally, this was not a momentary failure; rather, the parties  
13 failed to dismiss the adversary proceeding for four months. The  
14 settlement was signed November 9, 2021. Response 2:10-11. The  
15 adversary proceeding was to be dismissed and counsel for the plaintiff  
16 circulated stipulation for dismissal to defendant; defendants signed  
17 it and returned it. Neither side followed up to ensure the  
18 stipulation was filed with the court.

19 For these reasons, counsel for each side will be sanctioned  
20 \$250,00; the court will issue a separate judgment, Fed. R. Civ. P.  
21 54(b), *incorporated by* Fed. R. Bankr. P. 54(a), from chambers. No  
22 further appearance on the order to show cause is required.

23 Dated: April 12, 2022

24  
25  
26 /S/  
Fredrick E. Clement  
27 United States Bankruptcy Judge  
28

# Instructions to Clerk of Court

## Service List - Not Part of Order/Judgment

**The Clerk of Court is instructed to** send the Order/Judgment or other court generated document transmitted herewith *to the parties below*. The Clerk of Court will send the document via the BNC or, if checked \_\_\_\_, via the U.S. mail.

<b>Attorney for the Plaintiff(s)</b>	<b>Attorney for the Defendant(s) (if any)</b>
<b>Bankruptcy Trustee (if appointed in the case)</b>	<b>Office of the U.S. Trustee</b> Robert T. Matsui United States Courthouse 501 I Street, Room 7-500 Sacramento, CA 95814