

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Modesto, California

August 20, 2015 at 2:00 p.m.

1. [10-94411](#)-E-7 CAROLE CAMERON
[14-9005](#)
FERLMANN V. GARRETT ET AL
DISMISSED: 07/23/2015

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

Final Ruling: No appearance at the August 20, 2015 Status Conference is required.

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

Adv. Filed: 1/30/14
Answer: 3/26/14

Nature of Action:
Recovery of money/property - fraudulent transfer
Recovery of money/property - other

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

Notes:

Stipulation to Dismiss Adversary Proceeding filed 7/22/15 [Dckt 36]

Adversary Proceeding dismissed 7/23/15

2. [10-94411](#)-E-7 CAROLE CAMERON
 [14-9006](#)
 FERLMANN V. GARRETT
 DISMISSED: 07/23/2015

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

Final Ruling: No appearance at the August 20, 2015 Status Conference is required.

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

Adv. Filed: 1/30/14
Answer: 3/18/14

Nature of Action:
Recovery of money/property - fraudulent transfer
Recovery of money/property - other
Approval of sale of property of estate and of a co-owner

The Adversary Proceeding having been dismissed, the Status Conference is removed from the calendar.
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Notes:

Stipulation to Dismiss Adversary Proceeding filed 7/22/15 [Dckt 63]

Case dismissed 7/23/15

3. [13-90219](#)-E-7 DOUGLAS KENNEDY
[13-9041](#)
KENNEDY V. INTERNAL REVENUE
SERVICE

STATUS CONFERENCE RE: COMPLAINT
12-23-13 [[1](#)]

Final Ruling: No appearance at the August 20, 2015 Status Conference is required.

Plaintiff's Atty: Trevor J. Zink
Defendant's Atty: Boris Kukso

Adv. Filed: 12/23/13
Reissued Summons: 2/14/14

Answer: 3/10/14

Nature of Action:
Dischargeability - priority tax claims

The Status Conference is continued to 2:00 p.m. on January 14, 2016.

Notes:

[US-3] Joint Status Conference Statement Regarding the Stay of the Adversary Proceeding filed 8/7/15 [Dckt 57]

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 Adversary Proceeding Conference Status Report 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 Status Conference is continued to **2:00 p.m. on January 14, 2016.**

The Parties shall file status reports on or before fourteen days prior to the above continued Status Conference date.

4. [14-91023](#)-E-11 JOSEPH TEDESCO

CONTINUED STATUS CONFERENCE RE:
CHAPTER 11 VOLUNTARY PETITION

7-16-14 [[1](#)]

Debtor's Atty: David C. Johnston

The Status Conference is ~~XXXXXXXXXXXXXXXXXX~~.

Notes:

Continued from 4/30/15

Operating Reports filed: 5/13/15; 6/9/15; 7/9/15; 8/12/15

[DCJ-2] Motion for Authority to Sell Real Property filed 6/24/15 [Dckt 88];
Order granting filed 7/23/15 [Dckt 97]

AUGUST 20, 2015 STATUS CONFERENCE

The July 2015 Monthly Operating Reports includes the following information:

A.	Rental Income	
1.	July 2015.....	\$20,498
	July 2014-July 2015.....	\$295,043
B.	Sale of Rose Ave Property	
1.	July 2015.....	\$31,953
	July 2014-July 2015.....	\$1,953
C.	Total Cash Receipts	
1.	July 2015.....	\$53,277
	July 2014-July 2015.....	\$321,889
D.	Interest Only Payments on Debt	
1.	July 2015.....	(\$18,519)
	July 2014-July 2015.....	(\$234,166)
E.	Property Taxes	
1.	July 2015.....	(\$5,000)
	July 2014-July 2015.....	(\$25,182)
F.	Total Disbursements	
1.	July 2015.....	(\$28,285)
	July 2014-July 2015.....	(\$307,016)
2.	July 2015.....	\$
	July 2014-July 2015.....	\$

On Schedule A Debtor lists ownership of four properties:

Commercial property at 2501 McHenry Avenue,
Fee simple - FMV \$2,500,000.00, Secured Claims (\$1,998,713.00)

Condo, Unit 533, Seascape,
Fee simple - FMV \$625,000.00, Secured Claims (\$447,583.00)

Duplex at 2413 and 2415 Counts Court
Fee simple - FMV \$250,000.00, Secured Claims (\$342,138.00)

Small house, 1509 Rose Avenue
Fee simple - FMV \$95,000, Secured Claim (\$50,417.00)

On July 23, 2015, the court issued an order authorizing the Debtor in Possession to sell the Rose Avenue Property for \$82,500. Order, Dckt. 97.

The Debtor in Possession has not sought authorization from the court for any other transactions, post-petition financing, or other financial activity. No proposed disclosure or Chapter 11 plan have been filed in the more than one-year this case has been pending.

The court has recounted the multiple, unsuccessful attempts at prosecuting prior bankruptcy cases by the Debtor and Debtor in Possession in the Civil Minutes for the April 30, 2015 Status Conference in this case. Dckt. 83.

08-91933-E-7 BULMARO/MARIA PALAFOX
15-9017
MCGRANAHAN ET AL V. MI HOGAR,
LLC

STATUS CONFERENCE RE: COMPLAINT
5-29-15 [1]

Plaintiff's Atty: Steve S. Altman; Ezra N. Goldman
Defendant's Atty: Kelly L. Pope; Thomas E. Marrs

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

Nature of Action:
Declaratory judgment

Notes:

[MH-1] Defendant MI Hogar, LLC's Motion to Dismiss Complaint filed 7/10/15
[Dckt 11], set for hearing 8/20/15 at 10:30 a.m.

Amended Application for Admission to Practice Pro Hac Vice filed 7/13/15
[Dckt 15]; Order granting filed 7/14/15 [Dckt 16]

Trustee's First Status Conference Statement filed 7/17/15 [Dckt 18]

AUGUST 20, 2015 STATUS CONFERENCE

On July 17, 2015, the Plaintiff-Trustee filed a Status Report. Dckt. 18. The Trustee states that defendant Mi Hogar LLC is a "defunct limited liability company." Plaintiff-Trustee's counsel reports that he has been in communication with counsel for Mr. Esam Khacho, who asserts that he is responsible for and has authority to "wrap up" the affairs of Mi Hogar LLC. The Adversary Proceedings a determination by the court that \$73,174 of unclaimed monies held by the California Secretary of State are property of the bankruptcy estate (11 U.S.C. § 541) and not Mi Hogar LLC.

SUMMARY OF COMPLAINT

The Plaintiff-Trustee has filed the Complaint (Dckt. 1) naming Mi Hogar, LLC, a defunct California limited liability company, as the defendant. The Complaint alleges that prior to commencing their bankruptcy case Debtor purchased a home in Modesto, California. EMC Mortgage provided the financing for the purchase, and Alliance Title Company conducted the escrow. Alliance Title, for unknown reasons, retained \$73,174.00 in escrow from the purchase price.

Alliance Title was part of Mercury Title Company, which filed its own bankruptcy case in 2009.

Alliance Title, at some point in time, turned the \$73,174.00 over to the California State Controller.

The Trustee asserts that the money was funded into escrow by the Debtors, through the money they borrowed from EMC Mortgage.

The Trustee is enforced that Mi Hogar LLC has filed a competing claim with the California State Controller.

MOTION TO DISMISS

On July 10, 2015, a document titled Motion to Dismiss was filed, naming Mi Hogar, LLC as the party. Mi Hogar, LLC requests that the court dismiss the Complaint for failure to state a claim, and requests that the dismissal be without leave to amend (thereby causing the dismissal to be with prejudice). It is asserted that, based on additional alleged facts in the Motion, that Mi Hogar, LLC is entitled to the monies because (the court has attempted to mine the "grounds" upon which the relief is based, from the speculation, conjecture, and argument in the "Mothorities"):

- A. In 2007 Debtors purchased the Modesto property from Mi Hogar, LLC.
- B. Alliance Title "closed" the escrow for the purchase.
- C. At the close of escrow Mi Hogar, LLC transferred title to the Modesto property to Debtors.
- D. Alliance Title held \$73,174.00 in escrow from the purchase price.
- E. Alliance Title "declared" bankruptcy in 2009.
- F. The California State Controller is currently holding the \$73,174.00.
- G. Plaintiff-Trustee fails to allege a legal interest in the \$73,174.00.
 - 1. Alliance Title, as escrow, was holding the monies for the purchase price of the Modesto property as the agent of Mi Hogar, LLC. FN.1.
 - 2. Debtor relinquished any interest to the loan proceeds which were part of the purchase price to be paid to Mi Hogar, LLC.
- H. Defendant asserts that any possible amendments to the Complaint would be "futile," and therefore the Plaintiff-Trustee should be denied any opportunity to properly amend the Complaint which could assert claims against Mi Hogar, LLC.
- I. With respect to Mi Hogar, LLC being a dissolved limited liability company, it asserts that though dissolved it

continues to existing for winding up its affairs and defending itself in judicial proceedings relating to collecting and dividing up its assets. FN.2.

1.

FN.1. The court has to note that Defendant, in the Motion, fails to comply with the requirements in the District that the motion be a separate document from the points and authorities, and each declaration, and the exhibits. L.B.R. 9004-1 and the Revised Guidelines for Preparation of Documents. Here, Defendant has chosen to create a mash-up of the motion (which must state with particularity the grounds upon which the requested relief is based; Fed. R. Civ. P. 7(b) and Fed. R. Bank. P. 7007) and the legal points and authorities which contain the citations, quotations, arguments, speculation, and conjecture. Commonly over the past more than five years the court has referred to such a mash-up as a "Mothorities."

FN.2. Mi Hogar, LLC cites to and quotes California Corporations Code §§ 17707.06 and 177707.07 in the Mothorities for this proposition.

The Plaintiff-Trustee's Opposition (Dckt. 22) to the Motion asserts that the Trustee is claiming an interest in the money. Mi Hogar, LLC asserts a competing interest. The Plaintiff-Trustee seeks to have the court to determine whether the Plaintiff-Trustee or Mi Hogar, LLC has the superior claim to the \$73,174.00.

The Plaintiff-Trustee counter-asserts that up the closing of the escrow, Alliance Title because the Debtor's agent and was holding the monies for Debtors. The Plaintiff-Trustee asserts that the escrow instructions contain the directions from the parties to the transaction and will bear heavily on the determination of who has the superior claim to the money. However, nobody has a copy of the escrow instructions - not the Debtors/Plaintiff-Trustee or the Defendant. It is asserted that the title company long ago went out of business and its records are unavailable.

FINAL BANKRUPTCY COURT JUDGMENT

The Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157, and 11 U.S.C. § 549 and 550; and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(E), (F), and (H). Complaint ¶ 2, Dckt. 1.

6. [14-91334](#)-E-7 CATHERINE BENDER
[15-9003](#)
BENDER V. UNITED STATES OF
AMERICA ET AL

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
1-19-15 [[1](#)]

Plaintiff's Atty: Jason Borg
Defendant's Atty: unknown

Adv. Filed: 1/19/15
Answer: none

Nature of Action:
Dischargeability - priority tax claims

Notes:

Continued from 6/11/15

Request for Entry of Default by Plaintiff filed 8/3/15 [Dckt 11]; Memorandum re: Default Papers filed 8/5/15 [Dckt 12]

AUGUST 20, 2015 CONTINUED STATUS CONFERENCE

On August 3, 2015, (fifty-three days after the June 11, 2015 Status Conference) Plaintiff filed a Request for Entry of Default by Plaintiff. Dckt. 11. On August 5, 2015, the Clerk of the Court sent a "Memorandum re: Default Papers" to counsel for Plaintiff. Dckt. 12. That Memorandum notifies counsel that the request for entry of default could not be granted and the default entered because of the failure of Plaintiff not filing a request for default using the required Local Form EDC 3-726. Further, that Plaintiff has not lodged with the Clerk the required Entry of Default Order form. Nothing further has been filed or lodged with the court by Plaintiff since the August 5, 2015 Memorandum.

JUNE 11, 2015 CONTINUED STATUS CONFERENCE

No Status Report has been filed by Plaintiff in advance of the Status Conference. Plaintiff reported at the Status Conference that he has spoken with the Internal Revenue Service bankruptcy section, which advises him that they will not be opposing the Complaint as now drafted.

Plaintiff will now move for the entry of a default judgment.

SUMMARY OF COMPLAINT

The Complaint alleges that Plaintiff-Debtor has income tax obligations (taxes, interest, and penalties) to the United States for tax years 2009, 2010, 2011, and 2012. It is alleged that the tax obligations for 2009 are dischargeable, the tax returns having been due and filed at least three years prior to the commencement of the bankruptcy case.

For the 2010, 2011, and 2012 tax years, the returns were not due and were

not filed more than three years prior to the commencement of Plaintiff-Debtor's bankruptcy case. However, it is asserted that the penalties associated with the tax obligations for these three years are dischargeable.

SUMMARY OF ANSWER

No answer has been filed.

FINAL BANKRUPTCY COURT JUDGMENT

The Complaint alleges that Adversary Proceeding is a core proceeding and jurisdiction exists pursuant to 28 U.S.C. § 157(b). Congress has provided in 28 U.S.C. § 1334(a) and (b) that federal court jurisdiction exists for the bankruptcy case and all matters arising under the Bankruptcy Code, arising in the bankruptcy case, and related to the bankruptcy case. Determination of the dischargeability of a debt pursuant to 11 U.S.C. §§ 523 and 724 are matter arising under the Bankruptcy Code and core proceedings under 28 U.S.C. § 157(b).

7. [14-91542](#)-E-7 DANNY RODRIGUEZ
[15-9019](#)
RODRIGUEZ V. UNITED STATES OF
AMERICA

STATUS CONFERENCE RE: COMPLAINT
6-12-15 [[1](#)]

Final Ruling: No appearance at the August 20, 2015 Status Conference is required.

Plaintiff's Atty: Liat D. Blum
Defendant's Atty: unknown

Adv. Filed: 6/12/15
Answer: none

Nature of Action:
Dischargeability - priority tax claims

<p>The Adversary Proceeding having been dismissed, the Status Conference is removed from the Calendar.</p>

Notes:

On August 14, 2015, the Plaintiff-Debtor filed a Notice of Voluntary Dismissal of the Complaint. Dckt. 9. Plaintiff-Debtor having dismissed the Complaint pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rule of Bankruptcy Procedure 7041, the Status Conference is removed from the calendar.

8. [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](#)]

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

The Status Conference is XXXXXXXXXXXXXXXXXXXXXXXXXXXX .
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Notes:

Joint Status Report filed 8/12/15 [Dckt 77]

AUGUST 20, 2015 STATUS CONFERENCE

On August 12, 2015, United States Fire Insurance Company ("USFI"), the Debtors, and the Trustee filed a Joint Status Report. Dckt. 77. The Report is summarized as follows:

I. The Amended Complaint was filed on April 30, 2015, which includes a claim for judicial foreclosure against property of the bankruptcy estate.

II. USFI has granted the Trustee an open extension of time to file an answer to the Amended Complaint.

III. The Parties have agreed to a *partial* settlement of the Adversary Proceeding, as follows:

- A. USFI and Debtors have agreed to the entry of a nondischargeable judgment, with specified payment terms, with the first payment being due December 1, 2015, and the remaining principal balance and interest due December 1, 2019.
- B. The above stipulation is subject to a condition precedent, which is the settlement of the Superior Court Action, Stanislaus County, *Origel v. Garcia Family Bail Bonds*. The settlement agreement in the state court action is awaiting signature and filing.

- C. USFI has reached an agreement for the sale of the Oakdale Property, which agreement was approved by the court on July 6, 2015. The agreement affords the Trustee the opportunity to market and sell the property over a six month period. The court has authorized the employment of the real estate broker for the Trustee.
- D. USFI has reached an agreement with the Trustee and Debtor for a settlement of the dispute concerning its Proof of Claim (No. 19-3) in the Debtors' bankruptcy case. That stipulation has not yet been presented to the court for approval.

It is stated that the stipulation for the entry of a nondischargeable judgment shall not result in a "final judgment" at this time because there is still pending the judicial foreclosure issue.

At the Status Conference the parties addressed whether the court could, and should, bifurcate the claims pursuant to Federal Rule of Civil Procedure 54(b) and Federal Rule of Civil Procedure 7054 and enter the final judgment on all claims other than the judicial foreclosure, and continue with this Adversary Proceeding, if necessary, for the judicial foreclosure claim.

JULY 2, 2015 STATUS CONFERENCE

On June 25, 2015, United States Fire Insurance Company ("USFI") filed a Status Report in this Adversary Proceeding. Dckt. 72. It states that USFI believes that an agreement has been reached which settles this Adversary Proceeding and the objection to claim filed by Mark and Angela Garcia ("Defendant-Debtor") Debtors. USFI's counsel has transmitted the final forms for the Stipulation for Entry of Judgment and Stipulation for allowance of the USFI claim (POC 19-3).

The Report further states that USFI contemplates that no court approval is required, and unless otherwise ordered by the court. USFI does intend to seek court approval of the compromise with respect to the allowance of its claim in the Defendant-Debtor's bankruptcy case.

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

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

Debtors' Atty: Mark J. Hannon
Trustee's Atty: Estela O. Pino

The Status Conference is ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~.

Notes:

Continued from 7/2/15

Operating Report filed: 7/10/15

[PA-3] Order Granting Motion for Compensation filed 7/6/15 [Dckt 648]

[PA-5] Order Granting Motion to Approve Compromise filed 7/6/15 [Dckt 649]

Joint Status Report re Objection to Claim No. 19-3 by United States Fire Insurance Company filed 8/12/15 [Dckt 661]

AUGUST 20, 2015 STATUS CONFERENCE

No current Status Report was filed by the Trustee concerning the prosecution of the Chapter 11 case. Separate Status Reports have been filed in an Adversary Proceeding and the Objection to the Claim of United States Fire Insurance ("USFI"). On July 6, 2015, the court entered an order approving the compromise between USFI and the Trustee to afford the Trustee the opportunity to market and sell the Oakdale Property. Order, Dckt. 649.

No proposed plan or disclosure statement have been filed by the Trustee or any creditors.

At the Status Conference ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~.

JULY 2, 2015 STATUS CONFERENCE

This bankruptcy case was filed on November 30, 2012, and was designated by Debtor as a "small business case." Petition, Dckt. 1 at 1. When Debtor in Possession was unable to prosecute the case and obtain a timely confirmation of a plan, the court ordered the appointment of a chapter 11 trustee on October 3, 2013. Dckt. 256. This case is now 942 days old. The only proposed disclosure statement (for which a creditor and Debtor were the proponents) was not approved.

Trustee's Status Report

On June 25, 2015, the Chapter 11 Trustee filed his Status Report. As summarized below, the Trustee is reporting that now some headway is being made in this case.

I. Oakdale Property – On May 16, 2015, the Trustee filed a motion to employ a real estate agent to market this property for sale. The Chapter 11 Trustee reports that the Debtors are “cooperating” with the Trustee in the marketing and sale of the property.

II. Stipulation with USFI and McDonald Creditors – These creditors assert liens against the Oakdale Property. A settlement has been reached with these two creditors and the Trustee for the sale of the Oakdale Property and a carve out for the bankruptcy estate. The motion for approval of the stipulation is on the court’s July 2, 2015 calendar.

Under the terms of the stipulation: (1) the Property is to be sold within six months; (2) McDonald will have a secured claim of \$8,135 and an unsecured claim of \$8,135; (3) the USFI claim will be paid as allowed by the court upon resolution of Debtor’s objection to the USFI claim; (4) 20% of the net sales proceeds (after sales expenses and paying the McDonald secured claim) shall be paid to the estate and unencumbered monies; (5) if the Property is not sold within six months, USFI withdraws its consent to the sale and may proceed with a foreclosure sale.

III. G Street Investments – A settlement is being discussed, and the Trustee is waiting to receive proposed language for plan treatment which would resolve all disputes with this creditor.

IV. USFI litigation with Debtor – USFI has filed a nondischargeability complaint. Debtor has filed an objection to the USFI claim – asserting that it should be allowed in the amount of \$450,000 as a secured claim and \$14,896.98 as an unsecured claim. USFI has filed the claim in the amount of \$678,028.35. The Trustee does not intend to intervene in the objection to the claim, but believes that Debtor is “motivated” to litigate the objection because Debtor is defending the nondischargeability action. The Trustee reports that it has been represented to him by counsel for USFI that these disputes have been resolved and a settlement agreement is being drafted.

V. Chapter 11 Plan – The Trustee reports that YP Directory and the Trustee are working on a plan, with the cooperation of the Debtor.

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

STATUS CONFERENCE RE: AMENDED
COMPLAINT
6-19-15 [[7](#)]

Plaintiff's Atty: Roxanne Bahadurji
Defendant's Atty:
William A. Munoz [Meyer Wilson Co., LPA]
unknown [Sushil Prasad; Susea S. Prasad; Transamerica Financial Advisors,
Inc.]

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

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

Counterclaim Filed: 7/31/15 [demand for jury]
Answer: none

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.
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Notes:

[MF-1] Motion for Leave to File Second Amended Complaint filed 8/12/15
[Dckt 19], set for hearing 10/1/15 at 10:30 a.m.

SUMMARY OF AMENDED COMPLAINT

On June 19, 2015, the Trustee filed an Amended Complaint. Dckt. 7. The Amended Complaint alleges claims for and seeks the following relief:

- A. Debtors commenced their Chapter 13 bankruptcy case on December 30, 2009. It was converted to a case under Chapter 7 on December 21, 2012.
- B. Defendant Attorneys filed an arbitration claim against TFAI on January 31, 2012.
- C. The claim related to the conduct of a broker working for TFAI, including claims for fraud and the operation of a Ponzi scheme.
- D. It is alleged that Debtors concealed the existence of the Arbitration claim during their 341 Meeting on January 31, 2013.
- E. On April 13, 2013, Debtors executed a Medication 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.

- F. The claims and settlement proceeds thereof are asserted to be property of the bankruptcy estate.
- G. Defendant Attorneys were not authorized as counsel pursuant to 11 U.S.C. § 327.
- H. 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, Defendant Attorneys, and TFAI.
- I. A claim for violation of the automatic stay is asserted against all Defendants.
- J. Claims for turnover and accounting of the settlement proceeds is asserted against Debtor and Defendant Attorneys.

SUMMARY OF ANSWER OF DEFENDANT ATTORNEYS

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

Counterclaim by Defendant Attorneys

The Answer includes a counterclaim seeking declaratory relief that the arbitration claims accrued after the December 30, 2009 petition date and are not property of the estate. The counterclaim does not allege when the transactions, from which the claims arise, occurred.

SUMMARY OF ANSWER BY DEFENDANT-DEBTORS

No answer has been filed by the Defendant-Debtors. On August 11, 2015, the Defendant-Debtors filed a Status Report. Counsel for Defendant-Debtors states in the Report that they have only recently obtained the assistance of counsel, who is performing his investigation of the matter and is in the process of having informal settlement discussions with the Plaintiff-Trustee.

ANSWER OF TFAI

No answer or other responsive pleading has been filed by Defendant TFAI.

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.

FINAL BANKRUPTCY COURT JUDGMENT

The First 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). Complaint ¶¶ 2, 3, Dckt. 7.

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.