

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

IN RE:	:	CASE NO. 23-40569-EJC
	:	
MASTER LENDING GROUP, LLC,	:	CHAPTER 7
	:	
Debtor.	:	
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	:	
TIFFANY E. CARON, Chapter 7 Trustee	:	
for the Bankruptcy Estate of	:	
Master Lending Group, LLC	:	
	:	
Plaintiff,	:	
	:	
vs.	:	Adv. Pro. No. 23-04013-EJC
	:	
JUDITH HIRSCH,	:	
	:	
Defendant.	:	
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**PLAINTIFF'S MOTION FOR LEAVE TO FILE PLAINTIFF'S
FIRST AMENDED COMPLAINT**

Plaintiff, TIFFANY E. CARON, as Chapter 7 Trustee for the Bankruptcy Estate of Master Lending Group, LLC ("Plaintiff"), hereby moves the Court for leave to file Plaintiff's First Amended Complaint, conditionally filed herewith, respectfully showing this Honorable Court as follows:

STANDARD OF REVIEW

The Federal Rules of Civil Procedure provide that the court "should freely give leave [to amend] when justice so requires." Fed. R. Civ. P. 15(a)(2). "Ordinarily, a party must be given at least one opportunity to amend before the district court dismisses the

complaint.” *Corsello v. Lincare, Inc.*, 428 F.3d 1008, 1014 (11th Cir. 2005). However, leave to amend is not required “(1) where there has been undue delay, bad faith, dilatory motive, or repeated failure to cure deficiencies by amendments previously allowed; (2) where allowing amendment would cause undue prejudice to the opposing party; or (3) where amendment would be futile.” *Bryant v. Dupree*, 252 F.3d 1161, 1163 (11th Cir. 2001); accord *Cornelius v. Home Comings Financial Network, Inc.*, 293 Fed. Appx. 723, 728 (11th Cir. 2008); *Corsello*, 428 F.3d at 1014. None of these factors are applicable in this case.

The right to amend is broad. It encompasses the right to make “simple changes in phraseology as well as to add a new cause or theory of action.” *Farrell v. Hollingsworth*, 43 F.R.D. 362, 363 (D.S.C. 1968). Indeed, “[i]f the underlying facts or circumstances relied upon by a [party] may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits.” *Tomco Equipment Co. v. Southeastern Agri-Systems*, 542 F.Supp.2d 1303 (N.D. Ga. 2008) (quoting *Foman v. Davis*, 83 S.Ct. 22 (1962)). Thus,

[i]n the absence of any apparent or declared reason — such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc. — the leave sought should, as the rules require, be ‘freely given.’

Id. quoting *Id.*

This is because “[t]he American legal system encourages the efficient resolution of claims on the merits, and not the avoidance of legal issues by means of tightfisted pleading requirements.” *Harris v. Garner*, 216 F. 3d 970, 997 (11th Cir. 2000).

ARGUMENT AND CITATION OF AUTHORITY

I. NO BAD FAITH OR UNDUE DELAY

First, this amendment is timely. “Courts generally find that a plaintiff is not dilatory in seeking to amend a complaint “when no trial or pre-trial dates [have been] scheduled and no significant activity beyond the pleading stage has occurred.” *Smith v. Robin America, Inc.*, No. H-08-3565 (S.D. Tex. Aug. 7, 2009) (citing *Jones v. Rent-A-Center East, Inc.*, 356 F. Supp. 2d 1273, 1276 (M.D. Ala. 2005). In this case, no scheduling order has been entered and there has been only minimal activity beyond the pleading stage. Accordingly, Plaintiff’s motion to amend is not unduly delayed or made in bad faith.

II. UNDUE PREJUDICE

Of each of the factors identified above, it is the consideration of prejudice to the opposing party that carries the greatest weight. *See generally United States v. Hougham*, 364 U.S. 310, 316 (1960) (“Rule 15 of the Federal Rules of Civil Procedure . . . was designed to facilitate the amendment of pleadings except where prejudice to the opposing party would result.”); *Thompson v. New York Life Ins. Co.*, 644 F.2d 439, 444 (5th Cir. 1981) (“The policy behind Fed.R.Civ.P. 15(a) is to freely allow amendments unless the rights of the adverse party would be unduly prejudiced.”). “[P]rejudice is the touchstone of the inquiry under Rule 15(a).” *Lone Star Ladies Invest. Club v. Schlotsky's Inc.*, 238 F.3d 363, 368 (5th Cir. 2001).

In this case, allowing Plaintiff to amend her complaint would result in no prejudice to Defendant. Defendant has thus far avoided providing Plaintiff any discovery, and so

cannot claim that Plaintiff's proposed amendments would subject her to new and costly discovery demands or punish her for failing to anticipate shifting positions. Likewise, Defendant cannot reasonably demonstrate that allowing Plaintiff to amend will require significant additional expense or substantially delay the case, particularly when Defendant has opposed Plaintiff's motion to temporarily stay these proceedings to avoid unnecessary attorneys' fees and litigation expenses in this case.

III. PLAINTIFF'S PROPOSED AMENDMENT IS NOT FUTILE.

The motion to amend is not futile. The revised complaint is sufficient to state a cause of action and raise the right to relief above the speculative level.

IV. REPEATED FAILURE TO CURE DEFICIENCIES BY AMENDMENTS PREVIOUSLY ALLOWED.

The final factor – repeated failure to cure deficiencies by amendments previously allowed – is not applicable in this instance.

CONCLUSION

In this case, Plaintiff's proposed First Amended Complaint is timely, will result in no undue prejudice to Defendant and is not futile. Similarly, in this instance, there is no repeated failure to cure deficiencies. Accordingly, Plaintiff's Motion for Leave to File Plaintiff's First Amended Complaint should be granted.

This 27th day of November, 2023.

[Signature appears on following page]

Respectfully submitted,

TAYLOR ENGLISH DUMA, LLP
Attorneys for Chapter 7 Trustee

By: /s/Natalie R. Rowland
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Natalie R. Rowland
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EXHIBIT "A" FOLLOWS

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

IN RE:	:	CASE NO. 23-40569-EJC
	:	
MASTER LENDING GROUP, LLC,	:	CHAPTER 7
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Debtor.	:	
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TIFFANY E. CARON, Chapter 7 Trustee	:	
for the Bankruptcy Estate of	:	
Master Lending Group, LLC	:	
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Plaintiff,	:	
	:	
vs.	:	Adv. Pro. No. 23-04013-EJC
	:	
JUDITH HIRSCH,	:	
	:	
Defendant.	:	
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FIRST AMENDED COMPLAINT

COMES NOW Tiffany E. Caron, as Chapter 7 Trustee ("**Plaintiff**") for the bankruptcy estate of Master Lending Group, LLC (the "**Bankruptcy Estate**"), by and through undersigned counsel, and files this *First Amended Complaint* ("**Complaint**") against Judith Hirsch ("**Mrs. Hirsch**" or "**Defendant**"), respectfully showing the Court as follows:

Jurisdiction and Venue

1. This Court has jurisdiction over this adversary proceeding under 28 U.S.C. §§ 157 and 1334.
2. This adversary proceeding is a core proceeding under 28 U.S.C. §§

157(b)(2)(A), (E), (K), and (O).

3. This adversary proceeding is initiated under Rules 7001(1) and (2) of the Federal Rules of Bankruptcy Procedure and 11 U.S.C. §§ 105(a), 541, and 542.

4. Venue is proper in this Court under 28 U.S.C. §§ 1408 and 1409(a) because this adversary proceeding arises under Title 11, U.S.C. §§ 541 and 542 and arises in and relates to the Chapter 7 bankruptcy case of Master Lending Group, LLC (the “**Debtor**”), Case No. 23-40569-EJC (the “**Bankruptcy Case**”) pending in the United States Bankruptcy Court for the Southern District of Georgia, Savannah Division.

5. Plaintiff consents to the entry of final orders or judgments by the Bankruptcy Court.

6. Defendant may be served under Rule 7004 of the Federal Rules of Bankruptcy Procedure.

7. Defendant is subject to the jurisdiction of this Court.

Statement of Facts
a. General Background

8. Debtor filed a voluntary petition (the “**Petition**”) [Doc. No. 1] under Chapter 7 of Title 11 of the United States Code on July 6, 2023 (the “**Petition Date**”) and initiated the Bankruptcy Case.

9. Also on the Petition Date, Debtor filed under penalty of perjury its *Statement of Financial Affairs* (“**Sworn Statements**”), *Schedule of Assets* (“**Sworn Schedules**”) and *Liabilities* (collectively, “**Sworn Statements and Schedules**”).

10. On July 7, 2023, Plaintiff was appointed to the Bankruptcy Case as the

interim Chapter 7 Trustee under 11 U.S.C. § 701(a)(1) [Doc. No. 7].

11. The original meeting of creditors was scheduled to be held on August 9, 2023, in accordance with 11 U.S.C. § 341(a) but was instead continued to August 15, 2023 (the “**341 Meeting**”).

12. The 341 Meeting was conducted telephonically and concluded on August 15, 2023, after which time Plaintiff became the permanent Chapter 7 Trustee under 11 U.S.C. § 702(d).

b. The POA

13. Debtor is a sole member LLC whose owner is identified in the Petition as Gregory M. Hirsch (“**Mr. Hirsch**”) [Doc. 1, page 5 of 50].

14. Due to deteriorating health caused by Lou Gehrig’s disease, or ALS, Mr. Hirsch executed a power of attorney (“**POA**”) naming the Defendant, Mrs. Hirsch, as his agent and attorney-in-fact on November 8, 2022 [Doc. No. 4].

15. The POA granted Mrs. Hirsch full authority to handle the business and personal affairs and assets of Mr. Hirsch as fully as Mr. Hirsch could, acting for himself, and was filed contemporaneously with the filing of the Petition and related Sworn Statements and Schedules.

16. The authority granted to Mrs. Hirsch under the POA included, but was not limited to, the authority to sign and file Debtor’s Petition and Sworn Statements and Schedules.

17. Pursuant to the POA, Mrs. Hirsch signed and filed Debtor’s Petition and Sworn Statements and Schedules for Mr. Hirsch, with the assistance of bankruptcy counsel,

on the Petition Date.

18. Mr. Hirsch died due to complications related to his disease on August 3, 2023.

c. The Life Insurance Policy

19. Prior to his death, Mr. Hirsch purchased a life insurance policy from Pruco Life Insurance Company (“Pruco”) in the amount of \$5,000,000.00 on July 15, 2020 (the “Policy”).

20. Named as the beneficiary of the Policy is Mrs. Hirsch.

21. At some point prior to the time of filing Debtor’s bankruptcy Petition, however, Mr. Hirsch informed Mrs. Hirsch that he wanted the Policy proceeds to go to the Debtor for the benefit of the Bankruptcy Estate, rather than to Mrs. Hirsch, individually.

22. Mr. Hirsch was still able to communicate, despite his ALS diagnosis, before his untimely passing.

23. Mr. Hirsch did not equivocate in his desire to have the entirety of the Policy proceeds inure to the benefit of the Bankruptcy Estate and, on information and belief, took affirmative steps to have the beneficiary designation on the Policy changed to the Debtor.

24. Indeed, during the preparation of the Petition, Mrs. Hirsch acknowledged to counsel for the Debtor that, per Mr. Hirsch, the Policy belonged to the Bankruptcy Estate, with the clear understanding that it should be scheduled by Debtor’s counsel as such. A true and correct copy of communications between Mrs. Hirsch and Debtor’s counsel, acknowledging that the Policy is property of the Bankruptcy Estate, is attached

hereto as Exhibit "A."¹

25. Moreover, on further information and belief, the Policy was purchased with funds directly from or traceable to Debtor's bank account(s), from which some or all of the Policy premiums were paid and to which millions of dollars of creditors' funds were deposited.

d. The Material Representations and Misrepresentations of Mrs. Hirsch

26. Consistent with Mr. Hirsch's directive, Mrs. Hirsch swore under penalty of perjury in the original Sworn Schedules filed on the Petition Date (the "**First Sworn Schedules**"), that the Debtor had assets totaling \$6,070,100.00, comprised, among other things, of a \$5,000,000.00 "[u]nvested, equitable interest"² in the Policy, together with cash in the amount of \$975,000.00, and a Truist Bank checking account valued at \$95,100.00 [Doc. No. 1, pages 8-12 of 50].

27. In a subsequent amendment dated July 17, 2023 (the "**Second Sworn Schedules**"), Mrs. Hirsch modified Debtor's Sworn Schedules to reflect that the true value of the Truist Bank checking account is \$92,148.00, not the \$95,100.00 she had stated in Debtor's original Sworn Schedules, and to remove as an asset of the Debtor the \$975,000.00 cash [Doc. No. 31, page 1].

¹ The e-mail correspondence attached as Exhibit "A" hereto is not subject to the attorney-client privilege as counsel for Debtor was not retained to represent Mrs. Hirsch personally, and same was already admitted into evidence at the hearing on the Trustee's Motion for Turnover on November 8, 2023.

² There is no dispute that this is a direct quote from Line Item #73 of Debtor's originally filed Sworn Schedules, as well as each of the first two amendments thereto, which were signed and filed by Mrs. Hirsch, with the assistance of bankruptcy counsel, prior to the death of Mr. Hirsch.

28. Notably, Mrs. Hirsch did not remove from the Second Sworn Schedules the afore-listed equitable interest of the Debtor in the Policy. *See id.* at p. 3.

29. Rather, for a second time, Mrs. Hirsch swore under penalty of perjury that the proceeds of the Policy belonged to the Bankruptcy Estate as Mr. Hirsch intended. *Id.*

30. On July 26, 2023, Mrs. Hirsch again amended Debtor's Schedule of Assets (the "**Third Sworn Schedules**") to include Debtor's potential claims against various entities and one individual for breach of a promissory note. [Doc. No. 46].

31. No other amendments were otherwise made to Debtor's Schedule of Assets at that time. *Id.*

32. Thus, Mrs. Hirsch continued to swear for a third time, under penalty of perjury, that the Debtor maintained the sole equitable interest in the Policy, the proceeds of which, according to Debtor's counsel, and pursuant to Mr. Hirsch's wishes, were to be disbursed, or at the very least turned over, to the Trustee upon Mr. Hirsch's death.

33. On August 4, 2023, one day after Mr. Hirsch's passing, Mrs. Hirsch attempted to file a fourth amendment to Debtor's Schedule of Assets (the "**Fourth Sworn Schedules**").

34. This time, Mrs. Hirsch removed the Policy as an asset of the Bankruptcy Estate, thereby contradicting each of her prior sworn representations to the Court, given on three separate occasions under penalty of perjury, that Debtor held a beneficial interest in the entirety of the Policy proceeds. [Doc. No. 71].

35. The Fourth Sworn Schedules were not authorized, however, because Mrs. Hirsch's appointment as Mr. Hirsch's power of attorney had expired upon his death on

August 3, 2023.

36. The Fourth Sworn Schedules were therefore a nullity, not binding and were ineffective as an amendment to the three prior Sworn Schedules.

37. In addition to the Fourth Sworn Schedules, each of the amendments to Debtor's Schedule of Assets were also a nullity for the added reason that Debtor's counsel failed to receive wet-ink signatures for such amendments – a fact which even Debtor's counsel, himself, has conceded is cause for withdrawal of each and every one of the three amendments to Debtor's assets and schedules.

38. On October 23, 2023, Thomas J. Ratcliffe, Jr., as personal representative for Mr. Hirsch's estate ("Mr. Ratcliffe"), purported to file the following withdrawals of the amendments filed by Mrs. Hirsch: (1) withdrawal of Amended Schedule A/B filed on July 17, 2023, i.e., the "**Second Sworn Schedules**" [Doc No. 31]; (2) withdrawal of Amended Schedule A/B filed on July 26, 2023, i.e., the "**Third Sworn Schedules**" [Doc No. 46]; (3) withdrawal of Amended Schedule A/B filed on August 4, 2023, i.e., the "**Fourth Sworn Schedules**" [Doc No. 71]. That same date, Mr. Ratcliffe also purported to re-file the Fourth Sworn Schedules, again removing the \$5,000,000.00 Pruco Life Insurance Policy and the \$975,000.00 Cash on Hand.

39. Mr. Ratcliffe's purported attempt to re-file the Fourth Sworn Schedules was, on information and belief, at the behest and direction of Mrs. Hirsch, who singularly stands to benefit from Mr. Ratcliffe's amendment.

40. The second version of the Fourth Sworn Schedules, as signed by Mr. Ratcliffe, includes an extensive Disclaimer Regarding Debtor's Amended Schedule of

Assets, reflecting that Mr. Ratcliffe has no personal knowledge of the information in the Debtor's schedules and makes no representations of whether the amendments are accurate.

41. The Fourth Sworn Schedules signed by Mr. Ratcliffe also did not include a Corporate Resolution giving him the authority to file documents on behalf of the Debtor in this bankruptcy case, nor did he seek or obtain Court approval to act on behalf of the Debtor.

42. Finally, the Fourth Sworn Schedules signed by Mr. Ratcliffe were not signed by counsel for the Debtor corporation. Accordingly, they were improperly filed and require withdrawal.

43. Mr. Ratcliffe is employed by Mrs. Hirsch, on information and belief, and, accordingly, is not a disinterested party to this case. On further information and belief, Mr. Ratcliffe was instructed by Mrs. Hirsch and/or her personal attorneys and representatives to file the second version of the Fourth Sworn Schedules and is effectively acting as the proxy for Mrs. Hirsch. The second version of the Fourth Sworn Schedules, as filed by Mr. Ratcliffe, are a nullity and should be disregarded as such by the Court.

44. Mrs. Hirsch testified under oath at the 341 Meeting that it was Mr. Hirsch's unequivocal directive to her that the Policy proceeds be issued for Debtor's benefit and the Bankruptcy Estate more broadly.

45. This is independently confirmed by various actions taken by Mrs. Hirsch during the course of this bankruptcy action, including, but not limited to, the following: (1) scheduling the Policy, under penalty of perjury, as an asset of Debtor's Bankruptcy

Estate on not one, but three separate occasions; (2) making statements to Debtor's counsel that the Policy proceeds will be turned over to the Trustee upon Mr. Hirsch's death; and (3) testifying under oath that Mr. Hirsch directed her to issue the Policy proceeds to the Debtor.

46. The relationship between Mr. and Mrs. Hirsch was one of confidence and trust, such that Mrs. Hirsch had a duty to act in good faith in carrying out Mr. Hirsch's directives and with respect to the interests of Mr. Hirsch.

47. This action arises because Mrs. Hirsch has acted contrary to the directives of Mr. Hirsch and seeks to unjustly deprive the Debtor and the Bankruptcy Estate more broadly of the Policy proceeds by retaining said proceeds for her personal use and benefit.

48. Mrs. Hirsch holds only bare legal title to the Policy proceeds, without any equitable interest.

49. Mrs. Hirsch's possession of bare legal title to the Policy proceeds is insufficient to establish her interest as an intended beneficiary of the Policy proceeds.

50. Indeed, by virtue of its equitable interest, Debtor is the true intended beneficiary and rightful owner of the entirety of the Policy proceeds - a fact which has been sworn to and conceded by Mrs. Hirsch on more than three separate occasions.

COUNT I

Determination of Validity, Priority and Extent of Liens and Interest

51. Plaintiff re-alleges and incorporates paragraphs 1 through 50 of this Complaint as if the same were set forth verbatim herein.

52. At the commencement of the Case, the Debtor's Bankruptcy Estate was created pursuant to 11 U.S.C. § 541(a).

53. The Bankruptcy Estate includes all of Debtor's legal or equitable interests in property as of the commencement of the Bankruptcy Case. 11 U.S.C. § 541(a)(1).

54. The proceeds of the Policy constitute property of the Bankruptcy Estate based on Mr. Hirsch's explicit statement to Mrs. Hirsch that the entirety of the Policy proceeds belonged to the Debtor for the benefit of the Bankruptcy Estate and also that, on information and belief, Mr. Hirsch took affirmative steps to have the beneficiary designation on the Policy changed to the Debtor. *See, e.g., Exhibit "A."*

55. Pursuant to 11 U.S.C. § 541(a)(1) and Rule 7001(2), Plaintiff is entitled to a determination that the Policy proceeds are 100% property of the Bankruptcy Estate.

COUNT II

Turnover

56. Plaintiff re-alleges and incorporates paragraphs 1 through 55 of this Complaint as if the same were set forth verbatim herein.

57. To the extent that the Court determines that the Policy proceeds constitute property of the Bankruptcy Estate, the Policy proceeds are subject to turnover by Mrs. Hirsch to Plaintiff, to be held in her bonded fiduciary account until further order of the Court, pursuant to 11 U.S.C. § 542.

COUNT III

Breach of Confidential Relationship and The Duty of Good Faith

58. Plaintiff re-alleges and incorporates paragraphs 1 through 57 of this Complaint as if the same were set forth verbatim herein.

59. Under O.C.G.A. § 23-2-58, a relationship is confidential where “one party is so situated as to exercise a controlling influence over the will, conduct, and interest of another or where, from a similar relationship of mutual confidence, the law requires the utmost good faith, such as the relationship between partners, principal and agent, etc.”

60. Mrs. Hirsch had a confidential relationship with Mr. Hirsch, and it was Mr. Hirsch’s directive that Debtor receive the proceeds of the Policy for the benefit of the Bankruptcy Estate. *See, e.g., Exhibit “A”*.

61. Mrs. Hirsch had a duty to act in good faith in carrying out Mr. Hirsch’s directives and with respect to the interests of Mr. Hirsch, including having the named beneficiary in the Policy changed to the Debtor.

62. As detailed in the general allegations of the Complaint, Mrs. Hirsch has acted contrary to the best interests and directives of Mr. Hirsch and, furthermore, to unjustly deprive the Debtor and the Bankruptcy Estate more broadly of the Policy proceeds. *See, e.g., Exhibit “A.”*

63. When Mrs. Hirsch filed Debtor’s Fourth Schedules, Mrs. Hirsch falsely represented that Debtor no longer maintained an interest in the Policy. Mrs. Hirsch also falsely represented herself as Mr. Hirsch’s agent, despite the fact that her power of

attorney had expired at the time of Mr. Hirsch's death.

64. Those representations were made by Mrs. Hirsch in furtherance of her plan to misappropriate the Policy proceeds for her personal benefit.

65. Even after Mr. Hirsch's death, Mrs. Hirsch has continued to exercise a controlling influence over the interests of Mr. Hirsch, such that her obligation to act in good faith continues with respect to Mr. Hirsch's affairs.

66. Mrs. Hirsch's attempts to retain the Policy proceeds for herself, in contravention of Mr. Hirsch's directive, and to abrogate Debtor's interest in said proceeds, were actions unquestionably made in bad faith and constitute abuses of Mrs. Hirsch's confidential relationship with Mr. Hirsch.

67. The Bankruptcy Estate will have sustained loss and damage as the proximate result of Mrs. Hirsch's breach of her confidential relationship with Mr. Hirsch and failure to act in good faith in carrying out Mr. Hirsch's directives.

COUNT IV

Unjust Enrichment

68. Plaintiff re-alleges and incorporates paragraphs 1 through 67 of this Complaint as if the same were set forth verbatim herein.

69. Mrs. Hirsch has taken no steps to ensure that the proceeds of the Policy inure to the benefit of the Bankruptcy Estate as Mr. Hirsch intended, and not to Mrs. Hirsch personally.

70. Furthermore, by attempting to remove the Debtor's interest in the Policy as an asset of the Bankruptcy Estate, Mrs. Hirsch has done the exact opposite of what Mr.

Hirsch intended and directed Mrs. Hirsch to do, which was to ensure that the Policy proceeds be turned over to Plaintiff on the Debtor's behalf.

71. Moreover, on information and belief, the Policy was purchased with funds directly from or traceable to Debtor's bank account(s), from which some or all of the Policy premiums were paid and to which millions of dollars of creditors' funds were deposited.

72. To allow Mrs. Hirsch to retain for her personal benefit the proceeds of the Policy would unjustly enrich her because doing so would be in direct and clear contravention of Mr. Hirsch's directive and indeed, his right, to have the beneficiary of the Policy changed.

73. Mrs. Hirsch would also be unjustly enriched by being allowed to retain the benefit of the proceeds of the Policy, given that the Policy was purchased with funds directly from or traceable to Debtor's bank account(s).

74. Plaintiff requests that the Court enter judgment in favor of Plaintiff for the value of the Policy, based upon the equitable principle of unjust enrichment.

COUNT VI

Conversion (In the Alternative)

75. Plaintiff re-alleges and incorporates paragraphs 1 through 74 of this Complaint as if the same were set forth verbatim herein.

76. Debtor is the rightful beneficiary of the proceeds of the Policy, based on Mr. Hirsch's explicit statement to Mrs. Hirsch that the entirety of the Policy proceeds

belonged to the Debtor for the Bankruptcy Estate's benefit, and also that Mr. Hirsch took affirmative steps to have the beneficiary designation on the Policy changed to the Debtor, on information and belief. *See, e.g.,* Exhibit "A."

77. In spite of Mr. Hirsch's directive to Mrs. Hirsch that said proceeds be awarded to Debtor to benefit the Bankruptcy Estate, and despite the fact that the Policy was purchased with funds directly from or traceable to Debtor's bank account(s), Mrs. Hirsch continues to assert entitlement to all of the Policy proceeds.

78. Based upon the foregoing, and as a direct and proximate result of Mrs. Hirsch's actions, Plaintiff requests disgorgement immediately upon receipt by Ms. Hirsch of the entirety of the Policy proceeds that have been or will have been wrongfully paid to or retained under the Policy by Mrs. Hirsch, or anyone else on her behalf or as her assignee, other than the Plaintiff.

COUNT VII

Constructive Trust

79. Plaintiff re-alleges and incorporates paragraphs 1 through 78 of this Complaint as if the same were set forth verbatim herein.

80. On three separate occasions, in Debtor's First, Second and Third Sworn Schedules, Mrs. Hirsch swore under penalty of perjury that Debtor retained a 100% equitable interest in the Policy proceeds.

81. Additionally, Mrs. Hirsch has made statements to Debtor's counsel that the Policy proceeds would be disbursed to Plaintiff upon Mr. Hirsch's death. *See, e.g.,* Exhibit "A."

82. Mrs. Hirsch also testified at the 341 Meeting that Mr. Hirsch directed her, as his power of attorney at the time, to have the Policy proceeds issued to the Debtor for the Bankruptcy Estate's benefit.

83. The intent of Mr. Hirsch, that Debtor receive the Policy proceeds upon his death, and Mrs. Hirsch's awareness of Mr. Hirsch's intent, are unmistakably clear and are independently confirmed by the actions Mrs. Hirsch has taken throughout the course of this Bankruptcy Case, as further described hereinabove.

84. Mrs. Hirsch acted within the full scope of her authority as power of attorney for Mr. Hirsch when she filed Debtor's First, Second and Third Sworn Schedules and therein swore that Debtor retained a 100% equitable interest in the Policy proceeds.

85. Mrs. Hirsch acted with absolutely no authority, however, when after the death of Mr. Hirsch, she suddenly changed course by attempting to remove the asset from Debtor's bankruptcy Schedules.

86. Mrs. Hirsch's attempt to remove the Policy proceeds from Plaintiff's reach constituted a concerted effort by Mrs. Hirsch to exert exclusive authority and control over said proceeds, so as to enrich herself personally, on information and belief.

87. It would be unfair and inequitable to unjustly deprive the Debtor, to the detriment of the Bankruptcy Estate, the benefit of the Policy proceeds Mr. Hirsch intended for it to have.

88. It would also be unfair and inequitable to allow Mrs. Hirsch to be unjustly enriched by being allowed to retain the benefit of the proceeds of the Policy, given that the Policy was purchased with funds directly from or traceable to Debtor's bank

account(s).

89. A constructive trust is an equitable device used by courts to avoid unjust enrichment whenever the circumstances are such that it would be inequitable for the person holding legal title to property to retain the beneficial interest therein. O.C.G.A. § 53-12-132.

90. Based upon the foregoing, and as a direct and proximate result of Mrs. Hirsch's actions, Plaintiff requests the imposition of a constructive trust upon the proceeds of the Policy, together with immediate disgorgement of the entirety of the Policy proceeds wrongfully paid to or retained under the Policy by Mrs. Hirsch, or anyone else on her behalf or as her assignee, other than the Plaintiff.

RESERVATION OF RIGHTS

91. Plaintiff reserves the right to further amend this Complaint or to file a new complaint should facts be discovered to assert additional claims arising under Title 11 of the United States Code or applicable law.

WHEREFORE, Plaintiff prays for the following relief:

- a) That the Bankruptcy Estate be determined to have a 100% equitable interest in the Policy proceeds;
- b) That Mrs. Hirsch be determined to have only bare legal title to the Policy proceeds;
- c) That the Policy proceeds be determined to be property of the Bankruptcy Estate;
- d) That Mrs. Hirsch be ordered to turnover any and all proceeds of the Policy to

Plaintiff pursuant to 11 U.S.C. §542;

- e) That Mrs. Hirsch be entitled to recover nothing from the Policy proceeds;
- f) That a constructive trust upon the proceeds of the Policy be imposed, together with an order requiring the immediate disgorgement of the Policy proceeds wrongfully paid to or retained under the Policy by Mrs. Hirsch, or anyone else on her behalf or as her assignee, other than the Plaintiff;
- g) That Plaintiff be permitted to maintain the Policy proceeds in her bonded fiduciary account, to prevent depletion of the Bankruptcy Estate;
- h) That Plaintiff be awarded all of her costs, expenses, and attorneys' fees in connection with this action, pursuant to applicable law; and
- i) for such other and further relief that the Court deems just and proper.

This 27th day of November, 2023.

Respectfully submitted,

TAYLOR ENGLISH DUMA, LLP
Attorneys for Chapter 7 Trustee

By: /s/Natalie R. Rowland
Neil C. Gordon
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Natalie R. Rowland
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EXHIBIT "A" FOLLOWS

Jud Hill

From: Jud Hill
Sent: Monday, June 26, 2023 5:16 PM
To: 'ghirsch3@comcast.net'; Jeremiah Gustin
Cc: Jeremiah Gustin
Subject: RE: Prudential

Got it .. thanks. We are almost ready to file the case. Jeremiah will get with you later this week for review, signatures, etc.

Thanks, Jud

From: ghirsch3@comcast.net <ghirsch3@comcast.net>
Sent: Monday, June 26, 2023 5:13 PM
To: Jud Hill <jhill@gastinhill.com>; Jeremiah Gustin <jgustin@gastinhill.com>
Subject: RE: Prudential

For the record – I just asked Greg if he was aware that there are two Prudential policies (I asked because he has told me, repeatedly, that the \$5M policy was directed to MLG and I didn't even know the other policy existed!). He confirmed knowledge of the second Prudential Policy. Then, I specifically asked, "Is that \$2M policy also intended for MLG use?" to which he responded, "No. Only the \$5M policy for MLG... the other is for you"

jdh

From: ghirsch3@comcast.net <ghirsch3@comcast.net>
Sent: Monday, June 26, 2023 5:03 PM
To: Judson Hill (<jhill@gastinhill.com>) <jhill@gastinhill.com>; Jeremiah Gustin (<jgustin@gastinhill.com>) <jgustin@gastinhill.com>
Subject: Prudential

After (way too much) time on the phone with Prudential, I have determined that the reason I have evidence of both my paying a premium (semiannual) as well as Greg's personal account being debited, monthly, is because there are, in fact, two different policies! There is a \$5M policy (the one for which I last paid the premium in January – semiannual) and another, \$2M policy (being paid, monthly out of his personal account). The \$2M policy is not listed on the spreadsheet I sent to you.

Never a dull moment.

Judy

CERTIFICATE OF SERVICE

I hereby certify that on November 27, 2023, I electronically filed **PLAINTIFF'S MOTION FOR LEAVE TO FILE PLAINTIFF'S FIRST AMENDED COMPLAINT** with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification of such filing to the following attorneys of record:

Leon S. Jones
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/s/ Natalie R. Rowland
Natalie R. Rowland
Attorney for Plaintiff