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*Attorneys for Defendant Big Brothers Big
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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

JOHN CD DOE, a single man,

Plaintiff,

v.

BIG BROTHERS BIG SISTERS OF
AMERICA, a District of Columbia, non-
profit corporation; BIG BROTHERS BIG
SISTERS OF CENTRAL ARIZONA, an
Arizona corporation; JOHN DOE 1-100;
JANE DOE 1-100; and BLACK & WHITE
CORPORATIONS 1-100,

Defendants.

NO. CV2020-014920

**DEFENDANT BIG BROTHERS BIG
SISTERS OF CENTRAL ARIZONA'S
MOTION FOR SUMMARY
JUDGMENT**

(Assigned to Hon. Christopher Whitten)

(Oral Argument Requested)

Pursuant to Ariz. R. Civ. P. 56, Defendant Big Brothers Big Sisters of Central Arizona (“BBBSCAZ”) moves for summary judgment against Plaintiff John CD Doe¹ (“Plaintiff”) on Plaintiff’s claims in the above-captioned lawsuit. This Motion is supported by BBBSCAZ’s *Statement of Facts in Support of Motion for Summary Judgment* (the

¹ Plaintiff is identified as a John Doe in the First Amended Complaint, but Plaintiff’s real name is David Campbell.

1 “SOF”), the exhibits thereto, and the following Memorandum of Points and Authorities.

2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3 **I. INTRODUCTION.**

4 BBBSCAZ is entitled to summary judgment because under established federal
5 bankruptcy law, Plaintiff does not have standing to bring this lawsuit. Plaintiff filed for
6 bankruptcy twice (in 2009 and again in 2017) before filing this lawsuit. However, Plaintiff
7 did not schedule or disclose in either of his bankruptcy cases the claims Plaintiff asserts
8 against BBBSCAZ in this lawsuit.

9 Under controlling federal bankruptcy law, all tort claims for injuries arising from
10 events that occurred prior to the filing of a bankruptcy petition are property of the bankrupt
11 person’s estate, and therefore may only be pursued by the appointed bankruptcy trustee of
12 the estate. Because Plaintiff did not schedule or disclose claims arising from Arbulu’s
13 alleged conduct in either of his bankruptcy cases, those claims did not “re-vest” from the
14 bankruptcy estates to Plaintiff. Plaintiff therefore lacks standing to assert and is estopped
15 from asserting his claims against BBBSCAZ in this lawsuit as a matter of law.

16 **II. FACTUAL BACKGROUND.**

17 BBBSCAZ is an Arizona non-profit company that creates and supports one-to-one
18 mentoring relationships between adults and children ages six through 18 years of age. It
19 matches young people based on their common interests, screening and training, and civic
20 engagement initiatives. BBBSCAZ has provided the foregoing services to residents of the
21 State of Arizona since 1955.

22 In 1983, Plaintiff’s mother enrolled Plaintiff in BBBSCAZ’s mentoring program as
23 a “Little Brother” and Plaintiff was matched with a “Big Brother” named Italo Arbulu.
24 Plaintiff alleges in his FAC that he was subsequently sexually abused in 1983 by Arbulu
25 [SOF, ¶ 7.] Plaintiff claims that defendants are liable for Arbulu’s conduct. [*Id.*] Plaintiff
26 alleges that he reported the alleged sexual abuse to BBBSCAZ and the Phoenix Police

1 Department in July of 1983. [*Id.*] Plaintiff also reported his alleged sexual abuse by Arbulu
2 to the San Mateo (California) Police Department on January 28, 2005. [SOF, ¶ 8.] As such,
3 it cannot be legitimately disputed that Plaintiff knew of the alleged conduct giving rise to
4 the claims he asserts in this lawsuit no later than 2005. [SOF, ¶¶ 7–9].

5 Plaintiff filed for bankruptcy on June 2, 2009 (the “**First Bankruptcy Case**”) and
6 again on August 23, 2017 (the “**Second Bankruptcy Case**” and, collectively, with the First
7 Bankruptcy Case, the “**Bankruptcy Cases**”). [SOF, ¶¶ 1, 4]. Plaintiff did not schedule or
8 disclose in either of his Bankruptcy Cases any claims arising out of the alleged abuse by
9 Arbulu. [SOF, ¶¶ 2, 5]. Specifically, Plaintiff did not schedule or disclose any claims in
10 the Bankruptcy Cases against BBBSCAZ. [*Id.*] This is notwithstanding Plaintiff’s
11 fundamental obligation, as a debtor in a bankruptcy case, to disclose and schedule all
12 property of the estate. *See* 11 U.S.C. § 521(a)(1)(B)(i) (requiring a debtor to file schedules
13 of all assets and liabilities); *see also Oneida Motor Freight, Inc. v. United Jersey Bank*, 848
14 F.2d 414, 416 (3d Cir. 1988), *cert. denied*, 488 U.S. 967 (1988) (“A long-standing tenet of
15 bankruptcy law requires one seeking benefits under its terms to satisfy a companion duty to
16 schedule, or the benefit of creditors, all his interests and property rights.”). Trustees were
17 appointed in both Bankruptcy Cases, and Plaintiff was awarded discharges of his debts in
18 both Bankruptcy Cases. [SOF, ¶¶ 3, 6].² Plaintiff’s First Bankruptcy Case was closed on
19 September 30, 2009, and his Second Bankruptcy Case was closed on May 25, 2018. [SOF,
20 ¶¶ 3, 6].

23 ² Plaintiff filed his Bankruptcy Cases under Chapter 7 of the Bankruptcy Code. In a
24 Chapter 7 case, a trustee is appointed who has exclusive title and authority over all property
25 of the estate and the exclusive right to assert and enforce rights regarding such property.
26 *See* 11 U.S.C. §§ 323 and 704. *See also In re Benefield*, 102 B.R. 157, 158–59 (Bankr. E.D.
Ark. 1989) (“When the [Chapter 7 bankruptcy] petition was filed the debtor’s interest in
property became property of the estate under the control of the trustee” irrespective of
whether the debtor actually scheduled such property.).

1 **III. PLAINTIFF DOES NOT HAVE STANDING TO BRING THIS CASE**
2 **AGAINST BBBSCAZ AS A MATTER OF LAW.**

3 **A. Plaintiff's Claims Against BBBSCAZ Are Property Of Plaintiff's**
4 **Bankruptcy Estates.**

5 The filing of a bankruptcy case divests a debtor from all of the debtor's pre-filing
6 property rights - including legal claims or causes of action arising in tort - and transfers such
7 claims by operation of law into the bankruptcy estate for administration in accordance with
8 federal bankruptcy law. *See* 11 U.S.C. § 541(a); *see also Sierra Switchboard Co. v.*
9 *Westinghouse Elec. Corp.*, 789 F.2d 705, 707 (9th Cir. 1986) ("The scope of section 541 is
10 broad, and includes causes of action."). When Plaintiff filed his Bankruptcy Cases, any and
11 all legal claims that Plaintiff could have potentially pursued arising from conduct which
12 occurred prior to those filings (including the claims alleged in this case against BBBSCAZ)
13 became property of the bankruptcy estates. 11 U.S.C. § 541(a); *see also Segal v. Rochelle*,
14 382 U.S. 375, 379 (1966) (pre-bankruptcy assets that are "sufficiently rooted in pre-
15 bankruptcy past" are property of the bankruptcy estate).

16 Here, Plaintiff's claims against BBBSCAZ were (and are) property of the bankruptcy
17 estates in Plaintiff's Bankruptcy Cases. The actions giving rise to Plaintiff's claims occurred
18 in or around 1983. [SOF, ¶ 7]. Plaintiff reported the conduct giving rise to such claims to
19 the Phoenix Police Department in July of 1983. [*Id.*] Plaintiff subsequently reported the
20 same conduct to the police in California in January of 2005. [SOF, ¶ 8]. Plaintiff filed the
21 First Bankruptcy Case in 2009, long after the causes of action arising out of such conduct
22 arose. [SOF, ¶ 1]. As such, Plaintiff's claims belong to the bankruptcy estates.

23 **B. Because Plaintiff Did Not Schedule His Alleged Claims In His Chapter**
24 **7 Bankruptcy Cases, Plaintiff's Causes Of Action Cannot Re-Vest In**
25 **Plaintiff After The Closing Of The Bankruptcy Cases.**

26 Property of a Chapter 7 bankruptcy estate does not re-vest in a debtor unless the
property is "abandoned" to the debtor under 11 U.S.C. § 554. Section 554(c) provides that

1 if property is *properly scheduled and disclosed* by a debtor, the property can be deemed
2 abandoned to the debtor at the closing of the case. *See* 11 U.S.C. § 554(c) (“Unless the court
3 orders otherwise, any *property scheduled under* section 521(a)(1) of this title not otherwise
4 administered at the time of the closing of a case is abandoned to the debtor . . .”) (emphasis
5 added). Section 554(d) provides that if property *is not scheduled or disclosed* by the debtor,
6 the property cannot be abandoned to or otherwise revest in the debtor and remains property
7 of the estate even after the bankruptcy case is closed. *See* 11 U.S.C. § 544(d) (providing
8 that unless property is abandoned through one of the procedures provided under subsections
9 (a) through (c), the property “*is not administered in the case and remains property of the*
10 *estate.*”) (emphasis added).³

11 The trustees appointed in Plaintiff’s Bankruptcy Cases are the only parties that have
12 standing to bring claims on behalf of the Plaintiff’s bankruptcy estates. *Canatella v. Towers*
13 *(In re Alcala)*, 918 F.2d 99, 102 (9th Cir. 1990); *see also In re NC12, Inc.*, 478 B.R. 820,
14 831 (Bankr. S.D. Tex. 2012) (“If a cause of action belongs to the estate, then the Trustee
15 has exclusive standing to assert the claim.”).

16 Important for this Motion, the Bankruptcy Code is clear that a debtor like Plaintiff
17 lacks legal capacity to pursue an unscheduled claim once the debtor has been discharged.
18 That is the case even if the trustee, without knowledge of the claim because the claim was
19 never scheduled or disclosed, took no action with respect to that claim. *In re Lehosit*, 344
20 B.R. 782, 784 (Bankr. N.D. W. Va. 2006).

21 Bankruptcy trustees were appointed in both Bankruptcy Cases. [SOF, ¶¶ 1, 4].
22 Plaintiff received discharges in both Bankruptcy Cases, and both of those Bankruptcy Cases
23 were closed. [SOF, ¶¶ 3, 6]. Plaintiff did not list or disclose claims against BBBSCAZ or

24 ³ 11 U.S.C. § 554(a) and (b) provide procedures for abandonment of property of the
25 estate through a formal motion filed by the chapter 7 trustee or some other interested party.
26 No motion or order for abandonment of Plaintiff’s claims was filed in either of Plaintiff’s
Bankruptcy Cases. [See SOF, ¶¶ 1, 4].

1 Arbulu in his statements and schedules in either of the two Bankruptcy Cases. [SOF, ¶¶ 2,
2 5].

3 For these reasons, Plaintiff lacks standing to pursue the claims asserted in the FAC,
4 and the Court should therefore dismiss the FAC.

5 **IV. CONCLUSION.**

6 For the reasons stated in this Motion, the Court should grant BBBSCAZ summary
7 judgment.

8 **RESPECTFULLY SUBMITTED** this 26th day of December, 2024.

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