

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Ronald H. Sargis**

Bankruptcy Judge  
Sacramento, California

**September 9, 2015 at 2:30 p.m.**

1. [09-39501-E-13](#) ANGELA BOOKEY  
[15-2044](#)  
BOOKEY V. SUNTRUST MORTGAGE,  
INC.

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
2-24-15 [[1](#)]

**Final Ruling: No appearance at the September 9, 2015 Status Conference is required.**

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Plaintiff's Atty: Douglas B. Jacobs  
Defendant's Atty: Joely K.L. Bui

Adv. Filed: 2/24/15  
Answer: 3/26/15

Nature of Action:  
Validity, priority or extent of lien or other interest in property  
Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

The Status Conference is <span style="color: red;">xxxxxxxxxxxxxxxxxxxxxx</span> .
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Notes:

Continued from 6/24/15; the parties representing that this Adversary Proceeding has been settled and the documentation is being completed.

Plaintiff's Status Conference Statement filed 8/31/15 [Dckt 21]

**SEPTEMBER 9, 2015 STATUS CONFERENCE**

This Adversary Proceeding was filed on February 24, 2015. On June 9, 2015, Angela Bookey, the Plaintiff-Debtor, filed a Status Conference Statement which represents, "The parties have settled this matter and are waiting for the filing of documents to effectuate that settlement." Dckt. 15. In reliance on this representation, the court continued the June 24, 2015 Status Conference to September 9, 2015, stating,

The parties report that this Adversary Proceeding to quite title to Plaintiff-Debtors property upon completion of Plaintiff-Debtors Chapter 13 Plan. Counsel for Plaintiff-Debtor has resolved similar adversary proceedings for other clients by such stipulations. Based on the Status Conference Statement and

**September 9, 2015 at 2:30 p.m.**

representations of the parties, the court continues the Status Conference.

Civil Minutes, Dckt. 17.

On August 31, 2015, the Plaintiff-Debtor, filed a Status Conference Statement which represents, "The parties have settled this matter and are waiting for the filing of documents to effectuate that settlement." Dckt. 21.

This Adversary Proceeding has now been pending for 197 days. While prompt settlement of this Adversary Proceeding which seeks to quiet title with respect to a deed of trust which is asserted to be void as a matter of state law would not be unexpected, Plaintiff-Debtor and Defendant have failed to document for the court any such settlement or dismiss this Adversary Proceeding.

At the Status Conference the attorneys for the parties reported  
xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx.

2. [13-33903](#)-E-7 JAMES/GINA MOORE  
[14-2086](#)  
COUNTY OF SACRAMENTO V. MOORE  
ET AL

CONTINUED STATUS CONFERENCE  
RE: COMPLAINT TO DETERMINE  
DISCHARGEABILITY OF DEBT AND  
REPAYMENT  
3-24-14 [[1](#)]

**Final Ruling: No appearance at the September 9, 2015 Status Conference is required.**

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Plaintiff's Atty: Robert P. Parrish  
Defendant's Atty: Peter L. Cianchetta

Adv. Filed: 3/24/14  
Answer: 6/11/15

Nature of Action:  
Dischargeability - other

<b>Judgment having been entered by the court, the Status Conference is removed from the calendar.</b>
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No  
tes:

Continued from 6/24/15. Parties reported that the matter has been settled and the stipulated judgment is to be lodged with the court. Court continued as status conference.

Stipulation for Entry of Judgment and Settlement Agreement filed 4/14/15 [Dckt 36]

Judgment filed 9/2/15 [Dckt 39]

3. [15-20810](#)-E-13 VASILIIY/YELENA KUMANSKIY CONTINUED STATUS CONFERENCE RE:  
[15-2056](#) COMPLAINT  
WELLS FARGO CARD SERVICES V. 3-13-15 [[1](#)]  
KUMANSKIY ET AL

**Final Ruling: No appearance at the September 9, 2015 Status Conference is required.**

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Plaintiff's Atty: Austin P. Nagel  
Defendant's Atty: Mitchell L. Abdallah

Adv. Filed: 3/13/15  
Answer: 4/16/15

Nature of Action:  
Dischargeability - false pretenses, false representation, actual fraud

**The Status Conference is continued to 3:00 p.m. on September 22, 2015, to be conducted in conjunction with the hearing on confirmation of Defendant-Debtor's Chapter 13 Plan. It is represented that confirmation of the Plan will be the basis for resolving this Adversary Proceeding.**

#### Notes

Status conference initially set for 6/24/15.

Stipulation to Continue Status Conference [to 9/9/15] filed 6/5/15 [Dckt 10];  
Order approving filed 6/8/15 [Dckt 11]

Status Conference Statement [Wells Fargo Bank, N.A.] filed 9/2/15 [Dckt 12]

#### **SEPTEMBER 9, 2015 STATUS CONFERENCE**

Plaintiff represents in the Status Report that confirmation of the proposed Chapter 13 Plan of Defendant-Debtor will be the basis for resolving this Adversary Proceeding. The court continues the Status Conference to the same time as the hearing on the Motion to Confirm Plan.

4. [12-28312-E-7](#) MARIANNE GULLINGSRUD  
[14-2214](#)  
GULLINGSRUD V. AURORA LOAN  
SERVICES, LLC ET AL

CONTINUED STATUS CONFERENCE RE:  
SECOND AMENDED COMPLAINT  
3-13-15 [[34](#)]

**Final Ruling: No appearance at the September 9, 2015 Status Conference is required.**  
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Plaintiff's Atty: Scott D. Shumaker  
Defendant's Atty:  
Jennifer C. Wong [Nationstar Mortgage, LLC]  
Unknown [Aurora Loan Services, LLC; Aurora Bank FSB]

Adv. Filed: 7/23/14  
Answer: none

Amd Cmplt Filed: 10/20/14  
Reissued Summons: 12/15/14  
Answer: none

2<sup>nd</sup> Amd Cmplt Filed: 3/13/15  
Answer: none

Nature of Action:  
Recovery of money/property - other

**The Plaintiff-Debtor having Dismissed With Prejudice This Adversary Proceeding, the Status Conference is removed from the calendar.**

Notes:

Continued from 6/24/15 one final time to address the lack of attention to this matter. In court appearance of counsel for each of the parties is necessary. No telephonic appearances permitted.

**SEPTEMBER 9, 2015 STATUS CONFERENCE**

On September 4, 2015, Marianne Gullingsrud, the Plaintiff-Debtor filed a notice of dismissal of this adversary proceeding. No answer or other sufficient responsive pleading having been filed by Defendant, **this Adversary Proceeding has been dismissed by Plaintiff-Debtor pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rule of Bankruptcy Procedure 7041.**

5. [13-23119](#)-E-13 CYNTHIA MCDONALD  
[14-2210](#)  
MCDONALD V. JPMORGAN CHASE  
BANK, N.A. ET AL

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
7-21-14 [[1](#)]

**Final Ruling: No appearance at the September 9, 2015 Status Conference is required.**  
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Plaintiff's Atty: Peter L. Cianchetta  
Defendant's Atty: Amy M. Spicer

Adv. Filed: 7/21/14

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)

<p><b>The court has continued the Status Conference to 2:30 p.m. on October 14, 2015, by prior order of the court.</b></p>
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Notes:

Continued from 6/24/15. The parties advising the court that a settlement has been reached.

Joint Scheduling Conference Statement and Request to Continue Scheduling Conference filed 8/26/15 [Dckt 23]; Order pending

6. [09-36429](#)-E-13 ARTHUR/WEEDONETTE  
[15-2108](#) HANNIBAL  
HANNIBAL ET AL V. OCWEN LOAN  
SERVICING, LLC  
ADV. CASE DISMISSED:  
08/12/2015

STATUS CONFERENCE RE: COMPLAINT  
6-2-15 [[1](#)]

**Final Ruling: No appearance at the September 9, 2015 Status Conference is required.**  
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Adv. Case Dismissed 8/12/15 by request of Plaintiff [Dckt 8]

<p>The Plaintiff having dismissed this Adversary Proceeding with prejudice, the Status Conference is removed from the calendar.</p>
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7. [14-29231](#)-E-11 MIZU JAPANESE SEAFOOD  
BUFFET, INC.

CONTINUED STATUS CONFERENCE RE:  
VOLUNTARY PETITION  
9-15-14 [[1](#)]

Debtor's Atty: Stephen M. Reynolds

<b>The Status Conference is <del>XXXXXXXXXXXXXXXXXXXXXXXXXXXX</del>.</b>
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Notes:

Continued from 4/1/15

[RLC-17] Order denying motion for compensation filed 4/23/15 [Dckt 176]

[RLC-16] Order sustaining objection to claim [Claim No. 7-creditor Win Woo Trading, Inc.] filed 5/14/15 [Dckt 179]

**SEPTEMBER 9, 2015**

On April 23, 2015, the court approved final fees for counsel for the former Debtor in Possession. The last activity in this case was the court disallowing the claim of Win Woo Trading, Inc. by order filed on May 14, 2015. Dckt. 179. The court confirmed the Chapter 11 Plan in this case by order filed on February 10, 2015. Dckt. 138.

8. [14-27045-E-13](#) HARINDER SINGH  
[14-2237](#)  
SACRAMENTO SIKH SOCIETY  
BRADSHAW TEMPLE V. SINGH

CONTINUED PRE-TRIAL CONFERENCE  
RE: COMPLAINT TO DETERMINE  
DISCHARGEABILITY OF DEBT  
8-13-14 [[1](#)]

Plaintiff's Atty: Peter J. Pullen  
Defendant's Atty: Peter G. Macaluso

Adv. Filed: 8/13/14  
Answer: 9/12/14

Nature of Action:  
Dischargeability - false pretenses, false representation, actual fraud

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Notes:

Continued from 7/9/15 to afford the parties sufficient time to document the settlement.

Defendant's 2<sup>nd</sup> Pre-Trial Status Report filed 9/2/15 [Dckt 38]

On September 2, 2015, Defendant-Debtor filed a Pre-Trial Status Report. Dckt. 38. Debtor states that a settlement agreement has been signed. No mention is made of what is to happen in the adversary proceeding. Defendant-Debtor has filed a motion in his bankruptcy case to approve a compromise, which has not been set for hearing until September 22, 2015.

While the court gives the benefit of the doubt to the Defendant-Debtor and Plaintiff in this adversary proceeding, the court is concerned with the Debtor's failure to respond to the Trustee's current motion to dismiss the underlying bankruptcy case may be a strategic default to have the bankruptcy case dismissed. Then, with the bankruptcy case dismissed, Debtor would then attempt to contend that any purported settlement in connection with the adversary proceeding was void.

The court would have expected Debtor to respond to the motion to dismiss the bankruptcy case and notify the court that the hearing should be continued until after the settlement is approved.

A cursory review of the proposed settlement shows that it requires Debtor to make a \$60,000 payment. Motion, Dckt. 90. The Settlement Agreement, dated June 22, 2015, requires the Debtor to make a \$30,000 payment by July 2, 2015, and a second \$30,000 payment by December 25, 2015. Exhibit A, Dckt. 93.

No declaration is filed in support of the motion to approve compromise.

Since the settlement has not been approved, it appears that Debtor is already in default, being unable to make the July 2015 payment. The court will

not presume that the Debtor, as a fiduciary of the bankruptcy estate, has diverted property of the estate without proper authorization.

The court is now presented with a situation where the parties to this Adversary Proceeding are representing that they have resolved the manner based on Debtor making substantial payments which (1) were not authorized by the court and (2) are not consistent with the assets disclosed by the Defendant-Debtor under penalty of perjury on his Schedules in the bankruptcy case. See Amended Schedule B, Dckt. 29, and Schedule A, Dckt. 1.

9. [14-27045-E-13](#) HARINDER SINGH  
DMA-1

CONTINUED STATUS CONFERENCE RE:  
MOTION TO AVOID LIEN OF  
SACRAMENTO SIKH SOCIETY  
BRADSHAW TEMPLE  
8-2-14 [[15](#)]

Debtor's Atty: David M. Alden; Peter G. Macaluso

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Notes:

Continued from 7/9/15 to afford the parties sufficient time to document the settlement in the Adversary Proceeding.

[DMA-5] Debtor's Ex-Parte Application for an Order Dismissing Chapter 13 Proceeding filed 8/7/15 [Dckt 82]

[PGM-1] Motion to Compromise Controversy/Motion to Approve Settlement Agreement with Plaintiff Sacramento Sikh Society Bradshaw Temple filed 8/12/15 [Dckt 90], set for hearing 9/22/15 at 3:00 p.m.

[DPC-2] Trustee's Motion to Dismiss Case filed 8/24/15 [Dckt 97], set for hearing 9/9/15 at 10:00 a.m.



10. [09-27153-E-13](#) GIL/JOANNE RAPOSO  
[15-2095](#)  
RAPOSO ET AL V. OCWEN LOAN  
SERVICING, LLC ET AL

STATUS CONFERENCE RE: COMPLAINT  
5-14-15 [[1](#)]

**Final Ruling: No appearance at the September 9, 2015 Status Conference is required.**

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Plaintiff's Atty: Peter L. Cianchetta  
Defendant's Atty: Nichole L. Glowin

Adv. Filed: 5/14/15  
Answer: none

Nature of Action:  
Declaratory judgment

**The Status Conference is continued to 2:30 p.m. on October 14, 2015, to be conducted in conjunction with Plaintiff-Debtor's pending motions for entry of default judgment.**

Notes:

Request for Entry of Default by Plaintiff [Ocwen Loan Servicing, LLC] filed 6/30/15 [Dckt 7]

Request for Entry of Default by Plaintiff [OneWest Bank FSB] filed 6/30/15 [Dckt 8]

[PLC-1] Motion for Default Judgment [OneWest Bank FSB] filed 7/28/15 [Dckt 11]; set for hearing on 8/27/15; Stipulation to Continued Hearing [to 9/24/15 at 1:30 p.m.] filed 8/25/15 [Dckt 21]; Order continuing matter to 10/14/15 at 2:30 p.m. filed 8/31/15 [Dckt 27]

[PLC-2] Motion for Default Judgment [Ocwen Loan Servicing, LLC] filed 7/28/15 [Dckt 16]; set for hearing on 8/27/15; Stipulation to Continued Hearing [to 9/24/15 at 1:30 p.m.] filed 8/25/15 [Dckt 21]; Order continuing matter to 10/14/15 at 2:30 p.m. filed 8/31/15 [Dckt 28]

11. [09-43956-E-13](#) RAFAEL/ELSA MARTINEZ  
[15-2131](#)  
MARTINEZ, JR. ET AL V. LITTON  
LOAN SERVICING

STATUS CONFERENCE RE: COMPLAINT  
6-18-15 [[1](#)]

**Final Ruling: No appearance at the September 9, 2015 Status Conference is required.**

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Plaintiff's Atty: Douglas B. Jacobs  
Defendant's Atty: Phillip Barilovits

Adv. Filed: 6/18/15  
Answer: none

Nature of Action:  
Validity, priority or extent of lien or other interest in property  
Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

<b>The Status Conference is continued to 2:30 p.m. on November 4, 2015.</b>
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Notes:

Request for Entry of Default by Plaintiff filed 7/29/15 [Dckt 8]; default entered 7/30/15 [Dckt 9]

Stipulation to Set Aside Default Judgment filed 8/11/15 [Dckt 12]; Order granting filed 8/11/15 [Dckt 13]

Plaintiff's Status Conference Statement filed 8/31/15 [Dckt 14]

12. [14-27971](#)-E-13 KENDALL/CYNTHIA BERTRAND  
[15-2129](#)  
BERTRAND ET AL V. SAFE CREDIT  
UNION ET AL

STATUS CONFERENCE RE: AMENDED  
COMPLAINT  
6-17-15 [[6](#)]

**Final Ruling: No appearance at the September 9, 2015 Status Conference is required.**

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Plaintiff's Atty: Christopher J. Fry  
Defendant's Atty: unknown

Adv. Filed: 6/16/15  
Answer: none

Amd. Cmplt. Filed: 6/17/15  
Answer: none

Nature of Action:  
Recovery of money/property - turnover of property  
Injunctive relief - other  
Declaratory judgment  
Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

The Plaintiff-Debtors having filed a dismissal of this Adversary Proceeding, **the Status Conference is removed from the Calendar.**

Notes:  
**SEPTEMBER 9, 2015 STATUS CONFERENCE**

Kendall and Cindy Bertrand, the Plaintiff-Debtors, filed a Notice of Dismissal of this Adversary Proceeding on September 4, 2015, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 7041. Dckt. 10. The Adversary Proceeding having been dismissed, the Status Conference is removed from the calendar.

13. [15-21172-E-13](#) TATIANA DUBROVINA  
[15-2101](#)  
DEL DEBBIO V. DUBROVINA

STATUS CONFERENCE RE: COMPLAINT  
5-26-15 [[1](#)]

Plaintiff's Atty: Ognian A. Gavrilov  
Defendant's Atty: Pro Se

Adv. Filed: 5/26/15  
Answer: 6/24/15

Nature of Action:  
Dischargeability - false pretenses, false representation, actual fraud



Notes:

#### SUMMARY OF COMPLAINT

David Del Debbio, the Plaintiff, asserts that the debt owing on a \$191,600 loan made to Tatiana Dubrovina, the Defendant-Debtor, is nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A) [fraud].

#### SUMMARY OF ANSWER

Defendant-Debtor has filed an Answer in *pro se*. The Answer admits and denies specific allegations in the Complaint. The Answer includes fourteen affirmative defenses.

#### FINAL BANKRUPTCY COURT JUDGMENT

The Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). Complaint ¶¶ 1, 3; Dckt. 1. In her Answer, Defendant-Debtor admits the allegations of jurisdiction. Answer ¶ 1, Dckt. 6. However, Debtor denies that the determination of the nondischargeability of a debt is a core matter as stated in 28 U.S.C. § 157(b). The dischargeability of a debt arises under the Bankruptcy Code as statutorily created by Congress in 11 U.S.C. §§ 524 and 727 (for a Chapter 7 case). Further, Congress has statutorily created exceptions to the discharge arising under the Bankruptcy Code as provided in 11 U.S.C. § 523.

The claims asserted in the Complaint for determination of the alleged nondischargeable debt is a core matter pursuant to 28 U.S.C. § 157(b) and the bankruptcy matters referred to this court by the United States District Court for the Eastern District of California. E.D. Cal. Gen. Orders 182, 223.

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 for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). Complaint ¶¶ 1, 3; Dckt. 1. In her Answer, Defendant-Debtor admits the allegations of jurisdiction. Answer ¶ 1, Dckt. 6. However, Debtor denies that the determination of the nondischargeability of a debt is a core matter as stated in 28 U.S.C. § 157(b). The dischargeability of a debt arises under the Bankruptcy Code as statutorily created by Congress in 11 U.S.C. §§ 524 and 727 (for a Chapter 7 case). Further, Congress has statutorily created exceptions to the discharge arising under the Bankruptcy Code as provided in 11 U.S.C. § 523.

The claims asserted in the Complaint for determination of the alleged nondischargeable debt is a core matter pursuant to 28 U.S.C. § 157(b) and the bankruptcy matters referred to this court by the United States District Court for the Eastern District of California. E.D. Cal. Gen. Orders 182, 223.

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 -----, 2015.

c. Expert Witnesses shall be disclosed on or before -----, 2015, and Expert Witness Reports, if any, shall be exchanged on or before -----, 2015.

d. Discovery closes, including the hearing of all discovery motions, on -----, 2015.

e. Dispositive Motions shall be heard before -----, 2015.

f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at ----- p.m. on -----, 2015.

14. [10-23278-E-13](#) JOSEPH/LOURDES IBARRA  
[15-2110](#)  
IBARRA ET AL V. NATIONSTAR  
MORTGAGE LLC ET AL

STATUS CONFERENCE RE: COMPLAINT  
6-2-15 [[1](#)]

Plaintiff's Atty: Peter L. Cianchetta  
Defendant's Atty: Bryan M. Leifer

Adv. Filed: 6/2/15  
Answer: 6/24/15

Nature of Action:  
Declaratory judgment  
Other (e.g. other actions that would have been brought in state court if  
unrelated to bankruptcy case)

The Status Conference is ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~.

Notes:

#### SUMMARY OF COMPLAINT

Joseph and Lourdes Ibarra, the Plaintiff-Debtors, have commenced this Adversary Proceeding, naming Nationstar Mortgage, LLC ("Nationstar") and Bank of New York Mellon, Trustee (BNYM, Trustee) as the two Defendants.

The Plaintiff-Debtors seek the following relief from the court:

I. In the First Claim for Relief Plaintiff-Debtors seek a declaration that the court a declaration that the requested requires the voiding and release of Defendants' lien.

Plaintiff-Debtors further seek a judgment declaring that the prior orders of the court valuing the secured claim of Defendants and order confirming the Chapter 13 Plan are final non-appealable orders.

Plaintiff-Debtors further seek a judgment declaring that the debt for which Defendants are creditors has been discharged.

II. In the Second Claim for Relief Plaintiff-Debtors asserted that Defendants have failed to comply with their obligations arising under California Civil Code § 2941(d) to reconvey the deed of trust. The relief requested includes

III. In the Third Claim for Relief Plaintiff-Debtors request an award of contractual attorneys' fees.

Interestingly, the Complaint only seeks declaratory relief and does not seek to quiet title or otherwise obtain a judgment determining that Plaintiff-

Debtors own the real property free and clear of any lien asserted by Defendants.

## **SUMMARY OF ANSWER**

### **BNYM, Trustee Answer**

BNYM, Trustee has filed an Answer which admits and denies the allegations in the complaint. Most of the BNYM, Trustee's responses are that it lacks sufficient information to affirmatively admit or deny the allegations. These include the following allegations:

A. That the Adversary Proceedings arises out of the Chapter 13 case filed by Plaintiff-Debtors. BNYM, Trustee purports to lack such knowledge even though it and Nationstar filed Proof of Claim No. 13 in Plaintiff-Debtors' bankruptcy case.

B. That BNYM, Trustee has a claim against Plaintiff-Debtors.

C. That federal court jurisdiction exists for an adversary proceeding relating to a bankruptcy case.

D. That Plaintiff-Debtors state in the Complaint that they consent to the bankruptcy judge issuing orders and the judgment for any non-core claims asserted in the Complaint.

E. BNYM, Trustee fails to file any responses to the allegations in paragraphs 3 and 4 of the Complaint.

F. BNYM, Trustee cannot respond whether venue is proper for this Adversary Proceeding.

G. That Plaintiff-Debtors are debtors in bankruptcy case 10-23278 (which is the case in which BNYM, Trustee and Nationstar filed Proof of Claim No. 13).

H. Whether BNYM, Trustee is a "national bank."

I. Whether Defendants were required to reconvey the deed of trust securing the debt in Proof of Claim No. 13 upon the completion of Plaintiff-Debtors' Plan. FN.1.

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FN.1. It is bewildering to the court how a bank which regularly appears in this court and federal courts all across the nation cannot respond to an allegation of the obligation to reconvey a lien upon completion of a plan. If it, or its attorneys, lack the requisite knowledge to respond to such a simple allegation, then BNYM, Trustee's ability to respond to any allegation, and the contentions it makes to the court, would appear to be suspect.  
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The Answer includes fifteen affirmative defenses.

### **Nationstar Answer**

Nationstar has filed its answer, represented by the same counsel that

represent BNYM, Trustee. The Nationstar Answer suffers from the same lack of information and ability to respond to allegations as stated for BNYM, Trustee. The Nationstar Answer includes fifteen affirmative defenses.

#### **MANDATORY ALLEGATIONS OF FEDERAL COURT JURISDICTION AND CORE MATTER STATUS**

Federal Rule of Bankruptcy Procedure 7008(a) requires that a responding party admit or deny, in addition to subject matter jurisdiction, whether an Adversary Proceeding is a core or non-core matter, and if non-core, whether the responding party consents to the bankruptcy judge issuing all orders and the judgment in the adversary proceeding. The Rule does not permit a party to feign ignorance and lack sufficient information to affirmatively address the federal court jurisdiction and core/non-core responses. Neither answer affirmatively pleads either of these required items.

#### **SEPTEMBER 9, 2015 STATUS CONFERENCE**

It appears that this Adversary Proceeding has started off on the wrong foot with the Complaint, and continued down the wrong path with the Answers filed by the two Defendants. From the court's reading of the Complaint, declaratory relief is sought to have a judgment stating that the final orders previously issued by the court are "really" final orders. The Complaint does not seek to enforce any rights which flow from such orders and the confirmation of the Plan. If the court were to enter such judgment, one wonders whether there will be a subsequent adversary proceeding for a declaratory judgment stating that the declaratory judgment is "really" a judgment determining that the prior order are "really" orders. FN.2.

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FN.2. Counsel for Defendants might well find the comments concerning the declaratory relief requested in the Complaint to be unduly sarcastic for a judge. As Plaintiff-Debtors' counsel knows, the court has addressed this improper use of declaratory relief claims on several prior occasions with Plaintiff-Debtors' Counsel. The complaints requesting such improper relief continue, and if in matters which were filed before Plaintiff-Debtors' Counsel appreciated the proper use of a claim for declaratory relief, those complaints are not being amended.

As drafted, the court cannot determine what effective relief can be granted, possibly other than \$500.00 for a statutory damages claim and the reasonable attorneys' fees that go with a \$500.00 statutory claim which is appended to other requested relief which appears not likely to be granted.

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Quite possibly seduced by Plaintiff-Debtors' pleading style into believing that the bankruptcy judges in the Eastern District of California do not take seriously the Federal Rule of Civil Procedure and Federal Rule of Bankruptcy Procedure with respect to pleadings, the two Answers appear to contain a number of boilerplate provisions which cannot be properly pleaded. Complaints and answers are significant documents and not merely perfunctory form documents which are of little consequence. Both are subject to the certifications imposed by Federal Rule of Bankruptcy Procedure 9011.

Before the court can set a discovery and pre-trial conference schedule, it appears that an amended complaint will need to be filed and serve.



At the Status Conference, ~~XXXXXXXXXXXXXXXXXXXXXXX~~.

15. [15-20081-E-7](#) JANET ROBINSON  
[15-2086](#)  
MERCEDES-BENZ FINANCIAL  
SERVICES USA LLC V. ROBINSON

STATUS CONFERENCE RE: COMPLAINT  
5-1-15 [[1](#)]

**Final Ruling: No appearance at the September 9, 2015 Status Conference is required.**

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Plaintiff's Atty: Rebecca A. Caley  
Defendant's Atty: unknown

Adv. Filed: 5/1/15  
Answer: none

Nature of Action:  
Objection/revocation of discharge  
Dischargeability - willful and malicious injury

**The Status Conference is continued to 1:30 p.m. on October 8, 2015, to be conducted in conjunction with the post-judgment hearing on the motion for prevailing party attorneys' fees.**

Notes:

Request for Entry of Default by Plaintiff filed 6/9/15 [Dckt 8]

Entry of Default filed 6/11/15 [Dckt 12]

[RAC-1] Motion for Default Judgment of Mercedes-Benz Financial Services filed 7/10/15 [Dckt 13]; Order granting filed 8/17/15 [Dckt 26]

Default Judgment filed 8/18/15 [Dckt 28]

[RAC-2] Motion for Award of Attorneys' Fees and Court Costs of Mercedes-Benz Financial Services filed 9/2/15 [Dckt 31], set for hearing 10/8/15 at 1:30 a.m.

16. [14-29284-E-7](#) CHARLES MILLS  
[15-2099](#)  
BMW BANK OF NORTH AMERICA V.  
MILLS, JR.

STATUS CONFERENCE RE: COMPLAINT  
5-22-15 [[1](#)]

**Final Ruling: No appearance at the September 9, 2015 Status Conference is required.**

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Plaintiff's Atty: Austin P. Nagel  
Defendant's Atty: unknown  
Adv. Filed: 5/22/15  
Answer: none

Nature of Action:  
Dischargeability - false pretenses, false representation, actual fraud

**The Status Conference is continued to 2:30 p.m. on January 20, 2016, to afford Plaintiff the opportunity to file and have heard a motion for entry of default judgment.**

No

tes:

Plaintiff's Status Conference Statement filed 9/2/15 [Dckt 8]

**CHAMBERS PREPARED ORDER**

The court shall issue an Order (not a minute order) substantially in the following form holding that:

This Adversary Proceeding was filed on May 22, 2015. No answer has been filed. No request for entry of Defendant's default has been filed. In the Status Report filed on September 2, 2015, Plaintiff requests that the court continue the Status Conference so Plaintiff may seek the entry of a default judgment. The court has continued the Status Conference to January 20, 2016, at 2:30 p.m. Upon review of the pleadings in this Adversary Proceeding and good cause appearing,

**IT IS ORDERED** that BMW Bank of North America, the Plaintiff, shall file the request for entry of Defendant's default by September 21, 2015, and the Motion for Entry of Default Judgment by October 21, 2015.

**IT IS FURTHER ORDERED** that if the request for entry of default or the Motion for entry of default judgment, or both of them, are not timely filed, the court may dismiss this Adversary Proceeding without prejudice due to lack of prosecution, without further notice or hearing.

17. [10-25984-E-13](#) RON MORRIS  
[15-2132](#)  
MORRIS, II V. SPECIALIZED LOAN  
SERVICES, INC.

STATUS CONFERENCE RE: COMPLAINT  
6-18-15 [[1](#)]

**Final Ruling: No appearance at the September 9, 2015 Status Conference is required.**

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Plaintiff's Atty: Douglas B. Jacobs  
Defendant's Atty: unknown

Adv. Filed: 6/18/15  
Answer: none

Nature of Action:  
Validity, priority or extent of lien or other interest in property  
Other (e.g. other actions that would have been brought in state court if  
unrelated to bankruptcy case)

<p><b>The Status Conference is continued to 2:30 p.m. on January 20, 2016,</b> to allow the Plaintiff-Debtor to obtain the entry of a default judgment (motion having already been filed) and file post-judgment motions, if any.</p>
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Notes:

Request for Entry of Default by Plaintiff filed 7/29/15 [Dckt 8]

Entry of Default filed 7/30/15 [Dckt 9]

[DBJ-1] Motion for Default Judgment Including Award of \$1,995.00 in Attorney Fees and Penalties filed 8/27/15 [Dckt 12], set for hearing 10/8/15 at 1:30 p.m.

Plaintiff's Status Conference Statement filed 8/31/15 [Dckt 17]

18. [15-21393-E-11](#) RICKIE WALKER

CONTINUED STATUS CONFERENCE RE:  
VOLUNTARY PETITION  
2-24-15 [[1](#)]

Debtor's Atty: Pro Se

Notes:

Continued from 4/1/15

Operating Reports filed: 4/14/15; 5/14/15; 6/15/15; 7/14/15; 8/14/15

Report of Trustee at 341 Meeting docketed 4/9/15

[UST-2] Order granting motion to designate case a small business case filed 4/9/15 [Dckt 36]

Debtor's Motion Requesting Extension to Make Final Bankruptcy Filing Payment filed 6/17/15 [Dckt 43]; Order granting filed 7/9/15 [Dckt 50]

Notice of Noncompliance with Statutory Duties of Debtor and Requirements of United States Trustee filed 7/23/15 [Dckt 55]

Motion for Rule 2004 Examination filed 7/24/15 [Dckt 57]; Order granting filed 8/17/15 [Dckt 67]

**SEPTEMBER 9, 2015 STATUS CONFERENCE**

This voluntary Chapter 11 case was filed on February 24, 2015. The Debtor has served as the Debtor in Possession since the commencement of this case. No proposed Chapter 11 Plan and Disclosure statement has been filed in this case. This case has been pending for two hundred days. No substantive motions have been filed in the case.

The court has determined this case to be a "small business case" as defined by 11 U.S.C. § 101(51C). Order, Dckt. 36.

The latest Monthly Operating Report, which is for July 2015, (Dckt. 65) provides the following information:

STATEMENT OF CASH RECEIPTS AND DISBURSEMENTS		
Item	July 2015	Cumulative for Five Months of the Bankruptcy Case
Cash Receipts		
Cash Received From Sales	\$825	\$7,625
Total Cash Receipts	\$825	\$7,625
Cash Disbursement		
No Line Items Listed		

Total Cash Disbursements	(\$1,275)	(\$7,794)
<b>ASSETS AND LIABILITIES - BALANCE SHEET</b>		
Assets		
Cash	\$81	
Real Property	\$850,000	
Furniture, Fixtures, Equipment	\$5,000	

A review of the Monthly Operating Reports reflects that Debtor is not generating income from which a Chapter 11 Plan can be funded. Further, the cash disbursement information is incomplete and appears to be facially false.

On Schedule I Debtor states that he has \$17,000 a month in gross income from his business. Dckt. 1 at 34. On Schedule J Debtor lists having only \$1,360.00 a month in expenses. *Id.* at 38. The Net Monthly Income listed on Schedule J which the estate should be receiving for the months of March through July 2015, is \$16,440. Using the financial information provided on Schedules I and J under penalty of perjury, the Estate should have cash and cash equivalents (such as bank accounts) totaling at least \$82,200.00. (\$16,440 per month x 5 months). The estate has only \$81.

On the Chapter 11 Statement of Your Current Monthly Income, Form 22B, Debtor states under penalty of perjury that the combined income of Debtor and Debtor's non-filing spouse is only \$2,700 a month. Dckt. 20.

Debtor amended Schedule J on March 26, 2015. Dckt. 29 at 37-39. For two adults, Debtor states under penalty of perjury that the monthly expenses (excluding a mortgage or rent payment) is \$1,886.00. By Debtor's calculations, those expenses yield Monthly Net Income of \$1,764. However, Debtor's statement of expenses under penalty of perjury is suspect, including the following specific items:

I. Electricity, Heat, Natural Gas.....\$50 a month

Based on the thousands of cases filed in this court, electricity and natural gas usage in the Sacramento Area well exceeds an average of \$50 per month.

II. Telephone, Cell Phone, Internet.....\$40 a month

III. Food and Housekeeping Supplies.....\$250 a month

This expense for two adults appears to be grossly under stated. Assuming only \$50 a month for housekeeping supplies, that leaves \$100 a month for food per person. Over a thirty day month, with three meals a day, that is only \$1.11 per meal.

IV. Clothing Expense.....\$0.00 a month

V. Medical and Dental Expense.....\$0.00 a month

VI. Transportation.....\$150 a month

On Schedule B Debtor states under penalty of perjury that he has no vehicles.

VII. Life Insurance.....\$0.00

VIII. Health Insurance.....\$0.00

IX. Vehicle Insurance.....\$0.00

X. Taxes.....\$0.00

Taken at face value, the Debtor is destitute and financially incapable of prosecuting any Chapter 11 case. Conversely, the Schedules and other information provided under penalty of perjury is grossly inaccurate, with Debtor and his non-debtor spouse hiding assets and income from the creditors and court.

The court shall issue a separate order to show cause as to why this Chapter 11 case should not be dismissed due to lack of prosecution and the inability of Debtor to demonstrate any ability to prosecute a Chapter 11 case.

19. [13-32494-E-13](#) THEODORE/MOLLY MCQUEEN  
[14-2027](#)  
MCQUEEN ET AL V. G & K  
HEAVEN'S BEST, INC.

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
1-21-14 [[1](#)]

Plaintiff's Atty: C. Anthony Hughes  
Defendant's Atty: Peter G. Macaluso

Adv. Filed: 1/21/14

Answer: 2/17/14

Nature of Action:

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

Recovery of money/property - preference

Notes:

Order Setting Status Conference on Stipulation for Conditional Judgment filed 8/24/15 [Dckt 75]

Stipulation for Entry of Conditional Judgment filed 9/2/15 [Dckt 77]; no order submitted

Defendants' 7<sup>th</sup> Status Conference Statement filed 9/2/15 [Dckt 78]

#### **SEPTEMBER 9, 2015 STATUS CONFERENCE**

On August 24, 2015, the court issue an order for the parties to conduct an status conference concerning the Stipulation and proposed "Conditional Judgment" which had been lodged with the court. Order, Dckt. 75. The court's concerns with respect to the "Conditional Judgment" included the following:

"On its face, the proposed judgment does not grant affirmative relief, but is a judgment which is subject to a condition subsequent, and upon that event occurring one of two alternative judgments will be entered. This would necessitate the parties filing a motion to either amend the Conditional Judgment or vacate the Conditional Judgment and issuing a final judgment which grants final affirmative relief."

*Id.* at 2:9-15.

On September 2, 2015, Defendant filed its Seventh Status Conference Report, which states that on September 2, 2015, the Stipulation was filed with the court. (The stipulation has a filed date of September 3, 2015 on the Docket, entry number 77.

20. [13-32494](#)-E-13 THEODORE/MOLLY MCQUEEN  
[14-2004](#)  
G & K HEAVEN'S BEST, INC. V.  
MCQUEEN ET AL

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
1-4-14 [[1](#)]

Plaintiff's Atty: Peter G. Macaluso  
Defendant's Atty: C. Anthony Hughes

Adv. Filed: 1/4/14  
Answer: 2/5/14

Crossclaim Filed: 2/5/14  
Answer: 2/24/14

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

Notes:

Continued from 6/30/15 to afford the parties time to execute settlement documents and motions to approve the settlement filed with the court.

Plaintiffs' 7th Status Conference Statement filed 9/2/15 [Dckt 77]