

# Eastern District of California

Honorable Ronald H. Sargis  
Bankruptcy Judge  
Modesto, California

**November 20, 2014 at 2:30 p.m.**

1. [13-91701](#)-E-7 MARVAIS WADEN AND SHAIMA CONTINUED STATUS CONFERENCE RE:  
[14-9021](#) KAKAR COMPLAINT  
 DAMON REED, GUARDIAN AD LITEM 5-30-14 [[1](#)]  
 FOR MINOR PAYTEN E. V. WADAN

Plaintiff's Atty: Kenneth M. Foley  
Defendant's Atty: unknown

Adv. Filed: 5/30/14  
Answer: none

Nature of Action:  
Dischargeability - willful and malicious injury

Notes:

Continued from 10/2/14

**NOVEMBER 20, 2014 STATUS CONFERENCE**

Xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

## REVIEW OF COMPLAINT

The Complaint is titled "Adversary Complaint for Damages Exempt From Discharge." The Complaint states two causes of action. The First Cause of Action is for Negligence. The Second Cause of Action is for Strict Liability. The Prayer for relief requests (1) general damages, (2) medical and incidental expenses, (3) exemplary or punitive damages, and (4) for costs of suit. Though titled Complaint for Damages Exempt From Discharge, the complaint does not state (1) a short and plain statement of the claim showing that pleader is entitled to the nondischargeable relief and (2) a demand for relief determining that the debt is nondischargeable. Fed. R. Civ. P. 8(a); Fed. R. Bankr. P. 7008(a); *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d 868, 884 (2009); and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

At the Status Conference Plaintiff addressed the status of this case, whether a determination of nondischargeability was being requested, whether the Complaint was to be amended, if the parties were presenting to the court a stipulation for nondischargeability, and if this Adversary Proceeding is to be dismissed or stayed pending completion of the state court action. At the Status Conference Plaintiff reported xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx.

PRIOR HEARINGS

The court previously addressed the lack of prosecution of this

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Adversary Proceeding through an Order to Show Cause why the matter should not be dismissed. The court incorporates its Civil Minutes from the hearing on the Order to Show Cause (Dckt. 15) into this Status Conference and restates them as follows.

#### **KENNETH FOLEY'S DECLARATION**

Kenneth Foley, attorney for the Plaintiff, filed a declaration in response to the Order to Show Cause on September 17, 2014. In his response, Mr. Foley states that he filed the adversary on behalf of Payten Reed, a minor, because Mr. Foley had yet received relief from the automatic stay. Mr. Foley states that he was told in conversations that he had with the Debtors' attorneys that removing the stay was not a problem. To that end, Mr. Foley alleges that he sent a stipulation to Debtors' counsel, along with a Stipulation and Order, Notice of Motion for Approval of Stipulation and Declaration of Mr. Foley which he did not receive back the executed stipulation by Mr. Foyil or the Chapter 7 Trustee. Mr. Foley states that after consulting with a bankruptcy expert, Mr. Foley is now filing the Motion for Relief from Stay to be heard on October 2, 2014 at 10:00 a.m. in Department E. Mr. Foley states that since he does not anticipate any opposition on the Motion for Relief from Stay, Mr. Foley states that his intention is to dismiss the Adversary Proceeding upon receiving the court's order allowing Payten Reed to proceed in the State Court action, with the understanding she would be pursuing insurance proceeds only, and no personal judgment against the Debtors or their estate. The Motion for Relief from Stay is only being made in the individual Debtor Action, Case No. 13-91707-E-7, but in Case No. 13-91297-E-7, the bankruptcy filed by the corporation, Ariana Avesta, Inc. Identical relief is sought in that action.

Mr. Foley continues by explaining that he has not practiced frequently in bankruptcy courts, the last time being in the 1980's. Mr. Foley states that the procedures have changed since his last appearance in a bankruptcy court. Mr. Foley states that, if the minor is not afforded the relief from the stay to pursue the insurance coverage, the minor's counsel would at that time request the opportunity to issue a Summons and serve the Debtors.

Mr. Foley apologizes to the court for any delay in his handling of the request for relief from stay has caused.

The Complaint filed in the State Court did pray for punitive damages because the dog who ripped off the Plaintiff's ear, or a portion thereof, had previously attacked another child. However, because there is insurance which does exist on behalf of the Debtors, Plaintiff believes it is in her best interest to pursue that recovery, and not pursue the Debtors personally. Mr. Foley requests that if the relief from stay is not allowed and the court believes Plaintiff's counsel has not been diligent, the Minor's counsel would request sanctions be imposed against the Minor's counsel, and not in any way prejudice the Minor's ability to seek damages from the Debtors' insurer.

Relief from the Automatic Stay was granted on October 6, 2014, to allow Plaintiffs to pursue the state court litigation. Bankr. Case No. 13-91701, Dckt. 97,

2. [13-91409-E-7](#) SERGIO NOLASCO  
[13-9037](#)

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT

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Plaintiff's Atty: Robert D. Rodriguez  
Defendant's Atty: Armando S. Mendez

Adv. Filed: 11/4/13  
Reissued Summons: 12/30/13  
Jury demand made by Plaintiff in Complaint [Dckt 1]

Answer: none

Nature of Action:  
Objection/revocation of discharge  
Dischargeability - domestic support  
Dischargeability - divorce or separation obligation (other than domestic support)

Notes:  
Continued from 7/24/14

**NOVEMBER 20, 2014 STATUS CONFERENCE**

No updated Status Conference Reports have been filed prior to the November 20, 2014 Status Conference. At the Status Conference the parties reported the following.

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

**JULY 24, 2014 STATUS CONFERENCE**

The State Court proceeding concerning the award of attorneys' fees and whether such fees may be enforced by Plaintiff (counsel for the creditor) personally is scheduled for August 12, 2014. The court continues the Status Conference to allow the State Court to determine those family law proceeding issues.

**APRIL 10, 2014 STATUS CONFERENCE**

Plaintiff Robert Rodriguez shall on or before April 24, 2014:

1. File and serve the necessary and appropriate required state court proceedings to have his asserted right to attorneys' fees determined in the family law action;
2. Have the hearing for the state court proceedings promptly set for a reasonable hearing date;
3. File with this court copies of the state court pleadings and notice of hearing; and
4. File with this court a status report of the state court proceedings set for hearing.

If the above is not done on or before April 24, 2014, the Complaint shall be dismissed for failure to prosecute this Adversary Proceeding in good faith and the Clerk of the Court shall close the file for this Adversary Proceeding.

**APRIL 24, 2014 DECLARATION OF THE PLAINTIFF**

On April 24, 2014, the Plaintiff filed his declaration with exhibits attached of state court pleadings seeking a determination of

whether attorneys' fees have been awarded Plaintiff by the state court judge in the family law proceedings. Declaration, Dckt. 27. In the Declaration Plaintiff reports that the hearing in the state court has been scheduled for June 11, 2014.

#### **JANUARY 16, 2014 STATUS CONFERENCE**

The Defendant-Debtor appeared at the Status Conference. No award has been made in the state court dissolution proceeding for attorneys' fees to be paid by the Defendant-Debtor to counsel (the Plaintiff) for his ex-wife. No order has been entered transferring any right to attorneys' fees from the Defendant-Debtor's ex-wife to her counsel or for the Defendant-Debtor to pay any attorneys' fees to the ex-wife's counsel.

The court continues the Status Conference to allow the Plaintiff and his client, the Defendant-Debtor's ex-wife, to commence such proceedings as are necessary and appropriate to determine what, if any, attorneys' fees obligation is owed by the Defendant-Debtor, and if so, to whom the fees are owed. Then the court can address the alleged non-dischargeability of such fees.

This federal court is not going to intrude on the proceedings in the state court on this family law matter. Further, this court is not going to make a determination of whether under state law fees, if any, should be ordered to be paid to the ex-wife or her counsel by the Defendant-Debtor for the family law proceeding in state court.

The parties shall either file on or before January 23, 2014, a stipulation to modify the automatic stay to allow such a determination to be made or Plaintiff shall file an ex parte motion for such relief.

#### **SUMMARY OF COMPLAINT**

The Complaint seeks a determination that the debt of \$9,348.00 asserted to be owed by the named Defendant-Debtor, Sergio Nolasco, is nondischargeable pursuant to 11 U.S.C. § 523(a)(5) [domestic support obligation] and § 523(a)(15) [debt to spouse/former spouse/child incurred in course of a divorce or separation in connection with a separation agreement, divorce decree, or other court of record]. Further, that the Defendant-Debtor should be denied his discharge pursuant to 11 U.S.C. § 727(a)(4) for making false statements in his bankruptcy schedules.

Plaintiffs are the attorneys for the Defendant-Debtor's wife in the state court family law proceedings. In those proceedings Plaintiffs obtained an order for \$1,043.00 monthly spousal support and an award of \$11,473.00 for arrearage spousal support payments. Though Plaintiffs requested an award of \$9,348.00 in attorneys' fees, but no award was made prior to the commencement of this bankruptcy case.

The First Cause of Actions to seek to have the \$9,348.00 in attorneys' fees to be determined nondischargeable pursuant to 11 U.S.C. § 523(a)(5). (The state court has the discretion to order that an award of attorneys' fees be made directly to the attorney, but must order such. CALIFORNIA FAMILY LAW PRACTICE AND PROCEDURE 2<sup>ND</sup> EDITION, MATTHEW BENDER & COMPANY, § 62.06.)

The Second Cause of Action asserts that the asserted \$9,348.00 in attorneys' fees should be nondischargeable pursuant to 11 U.S.C. § 523(a)(15).

The Third Cause of Action seeks to have the Defendant-Debtor's discharge

denied pursuant to 11 U.S.C. § 727(a)(4)(A). It is alleged the income and expenses listed by the Defendant-Debtor on the Original Schedules I and J, and Amended Schedule J are false. It is alleged that the Defendant-Debtor provided conflicting testimony in the state court dissolution proceedings and that the state court has found the Defendant-Debtor's income and expenses to be different than as stated on Schedules I and J.

#### **SUMMARY OF ANSWER**

None Filed.

#### **REISSUANCE OF SUBPOENA**

On December 30, 2013 the Clerk of the court reissued the subpoena in this Adversary Proceeding. No Certificate of Service has been filed.

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 November 20, 2014 Status Conference is required.**

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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

<b>The Status Conference is continued to 2:30 p.m. on April 16, 2015.</b>
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Notes:

Pretrial conference reset as status conference by order filed 8/19/14 [Dckt 40]; adversary stayed pending ruling from the Ninth Circuit in *Smith, et al. v. IRS (In re Smith)* (Case No. 14-15857).

[US-3] Joint Status Conference Statement Regarding the Stay of the Adversary Proceeding filed 10/30/14 [Dckt 44]

#### **NOVEMBER 20, 2014 STATUS CONFERENCE**

The Parties filed a Joint Status Conference Report on October 30, 2014. This court has stayed the Adversary Proceeding pending the Ninth Circuit

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Court of Appeals issuing its ruling in Smith, et al v. IRS (In re Smith), Case No. 14-15875. The parties report that oral argument has not yet been conducted in Smith and request that this Status Conference be continued until March or April 2015.

Further staying action in this Adversary Proceeding pending determination of Smith is proper.

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 Status Conference in this Adversary Proceeding having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, consideration of the Parties Joint Status Report (Dckt. 44), and good cause appearing,

**IT IS ORDERED** that the Status Conference is continued to 2:30 p.m. on April 16, 2015. On or before March 15, 2014, the Parties shall file a Joint Status Conference Statement advising the court of the status of the Smith Appeal and recommendation for a further continued Status Conference date for the court to monitor this Adversary Proceeding without scheduling unnecessary status conference in advance of the Ninth Circuit ruling in that case.

4. [14-90249](#)-E-7 SCOTT MYERS  
[14-9026](#)  
IMH FINANCIAL CORPORATION V.  
MYERS

STATUS CONFERENCE RE: COMPLAINT  
9-22-14 [[1](#)]

**No Tentative Ruling**

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Plaintiff's Atty: Jasmin Yang  
Defendant's Atty: Thomas J. Polis

Adv. Filed: 9/22/14  
Answer: 10/22/14

Nature of Action:  
Objection/revocation of discharge

Notes:

**NOVEMBER 20, 2014 STATUS CONFERENCE**

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## SUMMARY OF COMPLAINT

The Complaint seeks to revoke the Defendant-Debtor's discharge pursuant to 11 U.S.C. § 727(d). It is alleged that the Defendant-Debtor: (1) incorrectly stated in the Schedules that some of his artwork is located in California when all of it is located in Germany; (2) incorrectly stated that his household furnishings are located in California when all of them are located in Germany; (3) incorrectly stated that the Debtor's two children live with him in California when they actually live in Germany; (4) incorrectly stated expenses for his children on Schedule J; and (5) after filing bankruptcy transferred \$10,000.00 from a bank account in the name of JDM Trust in the United States to an account in Germany.

## SUMMARY OF ANSWER

In his Answer, the Defendant-Debtor admits and denies specific allegations in the Complaint.

## FINAL BANKRUPTCY COURT JUDGMENT

The Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I) and (J). Complaint ¶¶ 2, 3, Dckt. 1. In his Answer Scott Myers, the Defendant-Debtor, admits the allegations of jurisdiction and core proceedings. Answer ¶¶ 2, 3, Dckt. 7. **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 157(b), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I) and (J). Complaint ¶¶ 2, 3, Dckt. 1. In his Answer Scott Myers, the Defendant-Debtor, admits the allegations of jurisdiction and core proceedings. Answer ¶¶ 2, 3, Dckt. 7. **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 December 8, 2014.
- 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**.

5. [14-90473-E-7](#) ROBERT WOJTOWICZ AND  
[14-9023](#) SHERRI HERTZIC-WOJTOWICZ

ORDER TO SHOW CAUSE  
RHS-110-6-14 [8]  
HERTZIC-WOJTOWICZ V. IRM  
CORPORATION

No Tentative Ruling.

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**Service:** Order to Show Cause Served on Counsel for the Plaintiffs, Chapter 7 Trustee, and U.S. Trustee on October 9, 2014. Dckt. 10. 41 days Notice of hearing provided.

The Order to Show Cause is <del>XXXXXXXXXXXXXXXXXXXX</del> .
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The court issued an Order to Show Cause on October 6, 2014, for Plaintiff to show cause why this Adversary Proceeding should not be dismissed for lack of prosecution. Dckt. 8. Plaintiff-Debtor's Counsel did not appear at the October 2, 2014 Status Conference in this Adversary Proceeding. Civil Minutes, Dckt. 7. No request for entry of default was filed by Plaintiff.

Counsel for the Plaintiff-Debtor filed a response to the Order to Show Cause on November 6, 2014. Dckt. 12. He explains that he delayed in requesting the entry of default because he was researching the defendant to determine (1) if it was still qualified to do business in California and (2) other possible claims the Plaintiff-Debtor may have against the Defendant.

On November 6, 2014, Plaintiff-Debtor filed a request for entry of default. Dckt. 11. Upon review of the Request for Entry of Default and the Certificate of Service for the Summons and Complaint, the court issued an order for a hearing on the Request for Entry of Default to be conducted on November 20, 2014 in conjunction with this Order to Show Cause.

The Declaration of Service for the Request states that service was completed as provided in Federal Rule of Bankruptcy Procedure 7004(b)(3). Such service is to be made on a corporation, partnership, or other unincorporated association by mailing a copy of the summons and complaint to the attention of an "officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process...." The Certificate of Service for the Summons and Complaint states that they were served on "IRM Corporation, Attn: Paul Echols, its managing or general agent, 619 13<sup>th</sup> St. Ste. 1, Modesto, California." Dckt. 3. No information is provided with the Certificate of Service as to why or how it asserted that Mr. Echols is a "managing or general agent" of the Defendant.

The California Secretary of State website lists several entities named IRS Corp. or IRM Corporation. All are reported as having their corporation status as being FTB suspended or forfeited. <http://kepler.sos.ca.gov/>.

The California State Bar identifies a Paul E. Echols as an attorney licensed to practice law in the State of California whose law firm address is 619 13<sup>th</sup> St. Ste. 1, Modesto, California. <http://members.calbar.ca.gov/fal/Member/Detail/142448>. It may well be that Mr. Echols is or was the attorney for IRM Corporation in the action in which the judgment was

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obtained, but is not an officer, manager, or agent for service of process.

6. [14-90473](#)-E-7 ROBERT WOJTOWICZ AND REQUEST FOR ENTRY OF DEFAULT OF  
[14-9023](#) SHERRI HERTZIC-WOJTOWICZ IRM CORPORATION  
HERTZIC-WOJTOWICZ V. IRM 11-6-14 [[11](#)]  
CORPORATION

**No Tentative Ruling:**

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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on August 14, 2014. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

The Motion for Entry of Default Judgment has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<b>The Motion for Entry of Default Judgment is <del>xxxxxxxxxxxxxxxx</del></b>
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Sherri Hertzic-Wojtowicz ("Plaintiff-Debtor") requests entry of default of IRM Corporation ("Defendant") in this adversary proceeding on November 6, 2014. Dckt. 11. Plaintiff-Debtor alleges that a summons for this case was issued on July 14, 2014. Plaintiff-Debtor then served the summons and complain properly and timely on Defendant on July 28, 2014. Defendant was required to file an answer or other response to the complaint on or before August 13, 2014, but Defendant failed to do so. The court has not granted Defendant an extension of time to file a response to the complain in this proceeding.

Plaintiff-Debtor requests that the default of the Defendant be entered.

**APPLICABLE LAW**

Federal Rule of Civil Procedure 55 and Federal Rule of Bankruptcy Procedure 7055 govern default judgments. *In re McGee*, 359 B.R. 764, 770 (B.A.P. 9th Cir. 2006). Obtaining a default judgment is a two-step process which requires: (1) entry of the defendant's default, and (2) entry of a default judgment. *Id.* at 770.

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Even when a party has defaulted and all requirements for a default judgment are satisfied, a claimant is not entitled to a default judgment as a matter of right. 10 Moore's Federal Practice - Civil ¶ 55.31 (Daniel R. Coquillette & Gregory P. Joseph eds. 3rd ed.). Entry of a default judgment is within the discretion of the court. *Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986). Default judgments are not favored, as the judicial process prefers determining cases on their merits whenever reasonably possible. *Id.* at 1472. Factors which the court may consider in exercising its discretion include:

- (1) the possibility of prejudice to the plaintiff,
- (2) the merits of plaintiff's substantive claim,
- (3) the sufficiency of the complaint,
- (4) the sum of money at stake in the action,
- (5) the possibility of a dispute concerning material facts,
- (6) whether the default was due to excusable neglect, and
- (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits.

*Id.* at 1471-72 (citing 6 Moore's Federal Practice - Civil ¶ 55-05[s], at 55-24 to 55-26 (Daniel R. Coquillette & Gregory P. Joseph eds. 3rd ed.)).; *In re Kubick*, 171 B.R. at 661-662.

In fact, before entering a default judgment the court has an independent duty to determine the sufficiency of Plaintiff's claim. *Id.* at 662. Entry of a default establishes well-pleaded allegations as admitted, but factual allegations that are unsupported by exhibits are not well pled and cannot support a claim. *In re McGee*, 359 B.R. at 774. Thus, a court may refuse to enter default judgment if Plaintiff did not offer evidence in support of the allegations. See *id.* at 775.

## DISCUSSION

At the hearing, Plaintiff addressed the service issue as follows.  
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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 Motion for Entry of Default filed by the Sherri Hertzic-Wojtowicz 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 Request for Entry of Default is  
XXXXXXXXXXXXXXXXXXXX

7. [13-90382-E-7](#) MICHAEL CARSON  
[13-9016](#)  
TAIPE V. CARSON

CONTINUED STATUS CONFERENCE RE:  
AMENDED COMPLAINT  
8-12-13 [[33](#)]

**Final Ruling: No appearance at the November 20, 2014 Status Conference is required.**

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Plaintiff's Atty: Thomas P. Hogan; Paula S. Grohs  
Defendant's Atty: Robert D. Rodriguez

Adv. Filed: 4/10/13  
Amd Complt Filed: 8/12/13  
Answer: 11/14/13

Nature of Action:  
Dischargeability - divorce or separation obligation (other than domestic support)

<p><b>The Status Conference is Removed From the Calendar and this Adversary Proceeding shall be closed by the Clerk of the Court. All matters have been concluded by final orders entered in this Adversary Proceeding.</b></p>
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Notes:

Continued from 6/12/14 as a holding date, the court having issued the final orders in this case.

Plaintiff's Continued Status Conference Statement filed 11/13/14 [Dckt 127]

#### **NOVEMBER 20, 2014 STATUS CONFERENCE**

On November 13, 2014, the Plaintiff filed a Status Conference Statement. Dckt. 127. She reports that all issues in the Complaint have been resolved by final orders of the court (attorneys' fees). The court entered the order, on the stipulation of the parties, that the offset rights of Plaintiff against Defendant-Debtor were nondischargeable and could be enforced post-discharge. Order, Dckt. 78. On May 7, 2014, the court entered an order awarding Plaintiff \$10,562.00 in attorneys' fees and \$363.46 in costs against the Defendant-Debtor. Order, Dckt. 118. No appeal has been taken from either order and they are final.

Plaintiff is correct that all issues and matters presented to the court have been determined and final orders entered.

This Adversary Proceeding shall be closed by the Clerk of the Court.

8. [08-91491](#)-E-7 ERICA/DAVID BURDG  
[08-9101](#)  
GONZALES ET AL V. BURDG ET AL

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
11-13-08 [[1](#)]

**Final Ruling: No appearance at the November 20, 2014 Status Conference is required.**

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Plaintiff's Atty: Michael Linn  
Defendant's Atty: pro se

Adv. Filed: 11/13/08  
Answer: 12/1/08; 4/20/09  
*Adversary Dismissed 11/11/14*

Nature of Action:  
Dischargeability - false pretenses, false representation, actual fraud  
Dischargeability - fraud as fiduciary, embezzlement, larceny

<p><b>The Complaint having been dismissed, the Status Conference is removed from the calendar.</b> The Clerk of the Court shall close this Adversary Proceeding.</p>
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Notes:

Continued from 9/4/14; Defendants to file a certified copy of the state court dismissal order and send a chambers' copy to Department E.

Copy of State Court Request for Dismissal filed with the bankruptcy court on 9/8/14 [Dckt 53]

[RHS-1] Order to Show Cause sustained and case dismissed 10/30/14 [Dckt 59]

9. 14-29284-E-11 CHARLES MILLS  
LBG-8 Lucas Garcia

EMERGENCY MOTION TO AUTHORIZE  
THE DEBTOR IN POSSESSION TO  
RECEIVE EARLY DISBURSEMENT OF  
ESTIMATED REMAINING FUNDS FROM  
SALE  
11-19-14 [85] O.S.T.

**No Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

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Notice: This Motion for Order Authorizing the Emergency Use of Monies of the Estate was set for hearing pursuant to an order shortening time. L.B.R. 9014(f)(3). Opposition may be presented orally at the hearing.



This Motion was filed by the Debtor that the Debtor be authorized to use \$25,000.00 of the net \$875,631.02 of sales proceeds (after payment of the secured claims) from the sale his residence and contents of his residence. Debtor reports that he has moved into a former rental property which he has retained, but which property was "trashed" by a former tenant.

Debtor asserts that, with the payment of over \$2,000,000.00 in secured claims from the sale, his unsecured debt is approximately \$162,000.00.

This case was filed on September 17, 2014. The First Meeting of Creditors was conducted on October 15, 2014 and continued to November 18, 2014. October 16, 2014 Docket Entry Report. The Claims Register lists \$82,835.00 in unsecured claims. This includes \$11,004.43 as an Internal Revenue Service priority claim. Proof of Claim No. 2.

In addition, a \$111,291.32 secured claim (a 2011 Maserati Granturismo listed as collateral) and \$84,232.79 secured claim (6561 Larry Way, North Highlands listed as collateral).

The Debtor requests the use of \$25,000.00 of the proceeds, asserting that exemptions in that amount can be claim in the proceeds from the personal property sold with the real property.