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FILED & ENTERED

AUG 03 2016

CLERK U.S. BANKRUPTCY COURT
Central District of California
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NOT FOR PUBLICATION

CHANGES MADE BY COURT

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

LOS ANGELES DIVISION

11 In re:

12 PETER BARTHELMESS and
13 KIM BARTHELMESS,

14 Debtors.

16 MUSTAPHA SANUSI,

17 Plaintiff,

18 v.

19 PETER WALTER BARTHELMESS and
20 KIM ELIZABETH BARTHELMESS,

21 Defendants.

Case No. 2:16-bk-12723-RK

Adv. No. 2:16-ap-01264-RK

Chapter 7

**ORDER GRANTING DEBTORS PETER
AND KIM BARTHELMESS'S MOTION
TO DISMISS ADVERSARY
PROCEEDING PURSUANT TO FED. R.
CIV. P. 12(b)(6)**

Date: August 2, 2016

Time: 3:00 p.m.

Place: Courtroom 1675, 16th Floor
255 E. Temple Street
Los Angeles, CA 90012

22 The Court having considered the Motion to Dismiss Adversary Proceeding Pursuant to
23 Fed. R. Civ. Proc. 12(b)(6); Request For Costs And Attorney's Fees Pursuant To 11 U.S.C. §
24 105(a); Request For The Court To Issue An Order Requiring Plaintiff And His Counsel To Show
25 Cause Pursuant To Fed. R. Bankr. P. 9011(c)(1)(B) ("Motion") filed by Chapter 7 Debtors, Peter
26 and Kim Barthelmess, as docket entry 2 in the above captioned adversary proceeding, good
27 cause appearing, the Court adopts its tentative ruling posted on its website and restated below:

28 Grant motion to dismiss for the reasons stated in the moving papers and for lack

1 of timely written opposition. Appearances are optional on 8/2/16, but counsel may
2 appear by telephone. Movants to submit a proposed order within 7 days of hearing.

3 Decline to issue order to show cause on request for sanctions under 11 U.S.C. 105
4 and FRBP 9011. 11 U.S.C. 105 is not a “roving commission” to do equity or to do
5 anything not inconsistent with the Bankruptcy Code, see *In re Van Ness*, 399 B.R. 897,
6 903 (Bankr. E.D. Cal. 2009), and there are existing procedures applicable here if movants
7 feel aggrieved by the filing of the adversary complaint to warrant the imposition of
8 sanctions, such as 11 U.S.C. 523(d) and FRBP 9011, which have not been followed, nor
9 briefed here. Having reviewed the allegations of the adversary complaint, the court
10 cannot say that based on its initial review of such allegations that plaintiff was not
11 “substantially justified” in making the allegations he did in the complaint under either
12 FRCP 12(b)(6), 11 U.S.C. 523(d) or FRBP 9011, and since we have an adversary system
13 of justice, under these circumstances, the court believes that it should leave it to the
14 parties to seek relief by appropriate motion, if they believe it warranted.

15
16 Having adopted its tentative ruling on the motion as its order, the Court orders that the
17 complaint and adversary proceeding dismissed with prejudice pursuant to Fed. R. Civ. P.
18 12(b)(6) and Fed. R. Bankr. P. 7012.

19 IT IS SO ORDERED.

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21 ###

22
23
24 Date: August 3, 2016

25 
26 _____
27 Robert Kwan
28 United States Bankruptcy Judge