

1 BARBARA A. MATTHEWS (SBN 185094)

2 Assistant U.S. Trustee

3 MAGGIE H. MCGEE (SBN 142722)

4 Trial Attorney

5 U.S. DEPARTMENT OF JUSTICE

6 Office of the United States Trustee

7 1301 Clay Street, Suite 690N

8 Oakland, California 94612-5231

9 e-mail: Maggie.mcgee@usdoj.gov

10 Telephone: (510) 637-3200

11 Attorneys for Acting United States Trustee,

12 AUGUST B. LANDIS

13 UNITED STATES BANKRUPTCY COURT

14 NORTHERN DISTRICT OF CALIFORNIA

15 In re

No. 11-45175 RLE

16 WALTER and MARIBEL NG

Chapter 11

17 Debtors.

U.S. TRUSTEE'S COMPLAINT TO DENY
DISCHARGE

18 In re:

19 AUGUST B. LANDIS, Acting U.S.
Trustee for Region 17,

20 Plaintiff,

21 Vs.

22 WALTER and MARIBEL NG

23 Defendants.

24 August B. Landis, the Acting United States Trustee for Region 17 (the "U.S.
Trustee"), alleges as follows:

25 **JURISDICTION AND VENUE**

- 26 1. This is an adversary proceeding in which Plaintiff August B. Landis seeks an entry of a
27 judgment denying the discharge of the debtors-defendants, Walter and Maribel Ng,
28 pursuant to 11 U.S.C. § 727(a) (2), (4), and (5).

2. The Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. § 1334 and 11 U.S.C. §§ 105(a) and 727(a).
3. This adversary proceeding is a “core” proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (J), and (O).
4. Venue in this Court is proper pursuant to 28 U.S.C. § 1409 based on the pendency of the above captioned bankruptcy case in this Court.

PARTIES

5. Plaintiff is the Acting United States Trustee for Region 17, which region includes that Judicial District for the Northern District of California.
6. Plaintiff, pursuant to 28 U.S.C. § 586(a)(3), monitors and supervises the administration of cases commenced under chapters 7, 11, 12, and 13 of the Bankruptcy Code throughout the Judicial District for the Northern District of California. In that capacity, Plaintiff has standing to raise and to appear and be heard on any issue in any bankruptcy case or proceeding. 11 U.S.C. § 307.
7. Plaintiff has standing to bring a civil action to seek the denial of a discharge pursuant to 11 U.S.C. § 727(c) (1).
8. Maribel and Walter Ng are the defendants. Defendants are adult individuals who reside in Contra Costa County, California.

BACKGROUND FACTS

9. Walter and Maribel Ng (the “Defendants”) filed a voluntary petition under chapter 11 of the U.S. Bankruptcy Code on May 12, 2011.
10. In connection with Defendants’ bankruptcy case, Defendants filed Schedules A through J and a Statement of Financial Affairs (“SoFA”) on June 2, 2011.
11. Defendants signed their petition, schedules and SoFA under penalty of perjury and indicated that they reviewed the contents of the documents and that the contents were true and correct.
12. Defendants appeared and testified at a meeting of creditors held on June 6, 2011 in connection with their chapter 11 case at which time they were sworn under oath.
13. Defendant Walter Ng testified at his meeting of creditors, he did not review all of the schedules and responses to the questions contained in the SoFA.

1 14. In response to numerous questions raised at the meeting of creditors, Defendants filed a
2 first amended Schedules and a SoFA on June 21, 2011 in which the Defendants made the
3 following changes, among others:

- 4 a. In answer to question number 10 of the SoFA (Other Transfers), Defendants
5 added transfers made to Lown on January 1, 2011 of notes originally valued at
6 \$1,033,537 in exchange for a 91.08% share of Lown.
- 7 b. In answer to question number 10 of the SoFA (Other Transfers), Defendants
8 added transfers of notes originally valued at \$2,398,277.75 to various self-settled
9 trusts;
- 10 c. In answer to question number 18 of the SoFA (Nature, Location and name of
11 business), Defendants added interests in High Five Enterprises, LLC; 2718 Santa
12 Rosa, LLC; RE Loans, LLC; Mortgage Fund '08, LLC; and Bar-K-Inc.
- 13 d. In response to Schedule A (Real Property), Defendants reduced the amount of
14 secured debt on "6715 Bethel Island Road, Bethel Island, CA [sic]" from
15 \$450,000 to \$5,313.37.
- 16 e. In response to Schedule A (Real Property), Defendants reduced the amount of
17 secured debt on "6725 Bethel Island Road, Bethel Island, CA [sic]" from
18 \$700,000 to \$30,974.25.
- 19 f. In answer to Schedule B (Personal Property) number 14 (Interest in partnerships
20 or joint ventures), Defendants added their interest in: 2718 Santa Rosa, LLC and
21 High Five Enterprises, LLC.
- 22 g. In response to Schedule B (Personal Property) number 15 (Government and
23 Corporate Bonds and Other negotiable and non-negotiable instruments),
24 Defendants added six different interests in notes, some of which were appraised in
25 December 2009 for \$2,312,353.
- 26 h. In response to Schedule B (Personal Property) number 20 (Contingent and non-
27 contingent interests in estate of a decedent, death benefit plan, life insurance
28 policy or trust), Defendants added their interest in the Ng Family Trust of 1989,
Walter and Maribel Ng, TTEES.

- 1 15. Defendant Walter Ng and his sons, Barney and Kelly, operated various investment
2 companies in the past 30 years, which primarily involved brokering loans for private
3 party lending transactions.
- 4 16. Walter Ng and his sons eventually grew the business into a multi-million dollar loan and
5 investment operation, operating different limited partnership entities funded by capital
6 from investors, including, but not limited to, Mortgage Fund 08 LLC (“MF08”), RE
7 Loans LLC (“RE Loans”), RE Reno LLC (“RER”), B-4 Partners, LLC (“B-4”),
8 Mortgage Fund LLC (“MF”), and Bar-K, Inc (“Bar-K”).
- 9 17. In or about 2007, Walter Ng recognized that RE LOANS would need to register with the
10 Securities and Exchange Commission (“SEC”) in order to continuing operating.
- 11 18. In order to avoid having to register with the SEC, Walter Ng, through a vote of the
12 members of RE LOANS, converted each investor’s equity interest into debt (“2007
13 Exchange”). Instead of owning an interest in RE LOANS, the investors became creditors
14 of RE LOANS represented by a promissory note. After the 2007 Exchange RE LOANS
15 ceased soliciting new investments.
- 16 19. At or about the same time as the 2007 Exchange, RE LOANS entered into a loan
17 transaction with Wells Fargo Bank in which Wells Fargo Bank obtained a first priority
18 security interest in most, if not all, of the assets of RE LOANS. The notes issued in the
19 2007 Exchange were subordinated to Wells Fargo’s security interest.
- 20 20. At or about the same time as the 2007 Exchange, Defendant Walter Ng and his sons
21 created MF08, which immediately solicited between \$70 to \$80 million on behalf of
22 REL, either through (1) direct transfers, (2) transfers made by entities controlled by
23 Walter Ng and his sons, or (3) by having MF08 pay existing borrowers of RE LOANS
24 who then repaid debts owed to RE LOANS.
- 25 21. In exchange for the investments made by MF08 to RE LOANS, RE LOANS sold MF08
26 twelve loans for par value when such loans were already in default.
- 27 22. In exchange for their investments, MFO8 investors received a promissory note from
28 MF08.
23. Also in or about 2007, Walter NG personally issued promissory notes to approximately
97 investors through his sole proprietorship, Walter Ng Investors, totaling \$24.9 million.

- 1 24. Approximately \$16 million of the money raised by Walter Ng Investors in or about 2007
2 went directly to RE LOANS.
- 3 25. Defendants sold their residence located at 4010 Canyon Road, Lafayette, California on
4 November 5, 2010 for \$2.025 million. Defendants realized \$528,052.57 from the sale.
- 5 26. Defendants purchased another home located at 3612 Rossmoor Parkway #2, Walnut
6 Creek, California for \$400,000. The Defendants made a cash down payment of \$140,000
7 and obtained a \$360,000 mortgage to fund the purchase.
- 8 27. Defendants made a charitable cash contribution to Culture to Culture Foundation, Inc. of
9 \$257,749 on November 11, 2010. The source of the payment came from the proceeds
10 from the sale of their residence.
- 11 28. Walter Ng Investors foreclosed on property located at 3511 Wells Road in Oakley,
12 California. Walter Ng Investors then obtained secured loans against the properties from
13 its affiliate, MF08. In December 2010, Walter Ng Investors gave a deed in lieu of
14 foreclosure to MF08 for both properties.
- 15 29. Within the year preceding the bankruptcy filing, and thereafter, Defendants received
16 \$5,000 per month from MF08.

FIRST CLAIM FOR RELIEF

§727(a) (2)–Intent to Hinder, Delay or Defraud a Creditor

- 17 30. Plaintiff hereby incorporates by reference each of the preceding paragraphs of the
18 Complaint as though fully set forth herein.
- 19 31. Plaintiff is informed and believes and thereon alleges Defendants transferred \$257,749
20 from proceeds from the sale of Defendants property located at 4010 Canyon Road in
21 Lafayette, California in November 2010, less than one year prior to filing bankruptcy, to
22 Culture to Culture Foundation with the intent to hinder, delay or defraud their creditors.
- 23 32. At Defendants' meeting of creditors, Walter Ng admitted that his sole proprietorship,
24 Walter Ng Investors, solicited approximately \$25 million from investors in 2007, but he
25 could not remember what he told prospective investors as to how the money would be
26 used nor could he remember where the money went.
- 27 33. Plaintiff is informed and believes and thereon alleges Defendant Walt Ng transferred
28 funds solicited on behalf of Walter Ng Investors to RE LOANS with the intent to hinder,
delay and defraud his creditors.

- 1 34. Plaintiff is informed and believes and thereon alleges Walter Ng knew RE LOANS was
2 insolvent at the time he made the transfers from Walter Ng Investors to RE LOANS,
3 knew he was raising money on behalf of RE LOANS, not on behalf of Walter Ng
4 Investors, failed to accurately inform investors how the money would be used, and made
5 the transfers for his own benefit and the benefit of his sons in order to evade SEC
6 regulations and in order to stave off foreclosure sales of property or properties owned by
7 RE LOANS.
- 8 35. Plaintiff is informed and believes and thereon alleges Defendant Walter Ng transferred,
9 directly or through Walter Ng Investments, between 2007 and 2010, approximately \$16
10 million in investor funds to RE LOANS, with the intent to hinder, delay or defraud his
11 creditors.
- 12 36. Plaintiff is informed and believes and thereon alleges Defendant Walter Ng transferred
13 funds received directly or by Walter Ng Investments, sums yet undetermined, between
14 2007 and 2010 to himself or other insiders with the intent to hinder and delay or defraud
15 his creditors.
- 16 37. Plaintiff is informed and believes and thereon alleges Defendant Walter Ng transferred
17 funds, referred to in paragraphs 33 to 36 above, within 5 years of filing bankruptcy, and
18 concealed such transfers from his creditors until at least one year prior to filing
19 bankruptcy.
- 20 38. Plaintiff is informed and believes and thereon alleges no distinction exists between and
21 among MF08, RE LOANS, RER, B-4, Bar-K-Inc., MF, and Walter Ng individually, as
22 Walter Ng and his sons treated the entities as indistinguishable, often raising funds for
23 one fund for the benefit of another.
- 24 39. Plaintiff is informed and believes and thereon alleges Defendant Walter Ng transferred,
25 or had transferred, funds by and between MF08, RE LOANS, RER, and Walter Ng
26 Investors, within one year prior to filing bankruptcy, with the intent to hinder, delay or
27 defraud his creditors.
- 28 40. Plaintiff is informed and believes and thereon alleges Defendant Walter Ng made the
transfers referred to in paragraph 39 above, outside of the one year period prior to filing
bankruptcy, and concealed such transfers from his creditors until one year prior to filing
bankruptcy.

1 41. Plaintiff is informed and believes and thereon alleges Defendants transferred property of
2 the Defendants to Lown, within one year prior to filing bankruptcy, with the intent to
3 hinder, delay or defraud their creditors.

4 42. Plaintiff is informed and believes and thereon alleges Defendants transferred property of
5 Defendants located at 3511 Wells Road in Oakley, California to insider MF08 with intent
6 to hinder, delay or defraud their creditors.

7 **SECOND CLAIM FOR RELIEF**

8 **§727(a) (4) -- False Oath or Account**

9 43. Plaintiff hereby incorporates by reference each of the preceding paragraphs of the
10 Complaint as though fully set forth herein.

11 44. Defendants knowingly and fraudulently failed to disclose, in answer to question number
12 10 of the SoFA (Other Transfers), transfers made to Lown, on January 1, 2011 of
13 \$1,033,537 in originally valued notes in exchange for a 91.08% share of Lown.

14 45. Defendants knowingly and fraudulently failed to disclose, in answer to question number
15 10 of the SoFA (Other Transfers), transfers of notes originally valued at \$2,398,277.75 to
16 various self-settled trusts;

17 46. Defendants knowingly and fraudulently failed to disclose, in answer to question number
18 18 of the SoFA (Nature, Location and name of business), interests in High Five
19 Enterprises, LLC; 2718 Santa Rosa, LLC; RE LOANS; MF08; and Bar-K-Inc.

20 47. Defendants knowingly and fraudulently failed to disclose, in response to Schedule A
21 (Real Property), the accurate amount of secured debt on “6715 Bethel Island Road,
22 Bethel Island, CA [sic].”

23 48. Defendants knowingly and fraudulently failed to disclose, in response to Schedule A
24 (Real Property), the accurate amount of secured debt on “6725 Bethel Island Road,
25 Bethel Island, CA [sic].”

26 49. Defendants knowingly and fraudulently failed to disclose, in answer to Schedule B
27 (Personal Property) number 14 (Interest in partnerships or joint ventures), their interest in
28 2718 Santa Rosa, LLC and High Five Enterprises, LLC.

50. Defendants knowingly and fraudulently failed to disclose, in response to Schedule B
(Personal Property) number 15 (Government and Corporate Bonds and Other negotiable

1 and non-negotiable instruments), interests in six different notes, some of which were
2 appraised in December 2009 for \$2,312,353.

3 51. Defendants knowingly and fraudulently failed to disclose, in response to Schedule B
4 (Personal Property) number 20 (Contingent and non-contingent interests in estate of a
5 decedent, death benefit plan, life insurance policy or trust) their interest in the Ng Family
6 Trust of 1989, Walter and Maribel Ng, TTEES.

7 52. Defendants knowingly and fraudulent failed to disclose, in response to Schedule B
8 (Personal Property) number 14 (Interests in partnerships and joint ventures), their interest
9 in 4010 Canyon Properties, LLC.

10 53. Plaintiff is informed and believes and thereon alleges Walter Ng made false statements at
11 his meeting of creditors when he claimed not to know what he told investors when
12 soliciting investments on behalf of Walter Ng Investments and falsely testified he did not
13 know where the money went.

14 **THIRD CLAIM FOR RELIEF**

15 **§727(a)(5)-- Failure To Satisfactorily Explain Loss or Deficiency of Assets**

16 54. Plaintiff hereby incorporates by reference each of the preceding paragraphs of the
17 Complaint as though fully set forth herein.

18 55. Defendant Walter Ng failed to satisfactorily explain the loss of \$24.9 million in
19 investments made to Walter Ng or Walter Ng Investors.

20 56. Defendant Walter Ng failed to satisfactorily explain the loss of approximately
21 \$810,243,364.45 million of investments made to RE LOANS.

22 57. Defendants failed to satisfactorily explain the loss of \$528,052.57 in proceeds received in
23 November 2010 from the sale of 4010 Canyon Road in Lafayette, California.

24 **PRAYER**

25 WHEREFORE, Plaintiff prays for the following:

- 26 1. A judgment denying Defendants' discharge pursuant to 11 U.S.C. § 727(a)(2), 11
27 U.S.C. § 727(a)(4); and/or 11 U.S.C. § 727(a)(5); and
- 28 2. A judgment determining Defendants' debts identified in Defendants' Schedules
A-F shall are non-dischargeable; and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 3. A bar to re-filing under any chapter of the Bankruptcy Code for a period of 8 years;
- 4. For such other and further relief as the Court deems just and proper.

Dated: 2/3/2012

Barbara Matthews
Assistant United States Trustee

/s/ Maggie H. McGee
Maggie H. McGee, Trial Attorney
Attorneys for August B. Landis,
Acting United States Trustee