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5 UNITED STATES BANKRUPTCY COURT
6 EASTERN DISTRICT OF CALIFORNIA
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9 In re) Case No. 13-31975-E-13
10 JACK GEORGE GANAS and)
11 LINDA MAE GANAS,)
12 Debtors.)
13 LINDA MAE GANAS and) Adv. Proc. No. 14-2080
14 JACK GEORGE GANAS,) Docket Control No. PD-1
15 Plaintiffs,)
16 v.)
17 WELLS FARGO BANK, N.A.,)
18 Defendant.)

19
20 MEMORANDUM OPINION AND DECISION
21 MOTION TO DISMISS COMPLAINT

22 On March 14, 2014, Linda Ganas and Jack Ganas ("Plaintiffs")
23 commenced this Adversary Proceeding asserting an Objection to the
24 Proof of Claim filed by Wells Fargo Bank, N.A. ("Defendant") and
25 asserting seven affirmative claims for relief against Defendant.
26 In response to the Complaint, Defendant filed a motion to dismiss
27 pursuant to Federal Rule of Civil Procedure 12(b)(6) all claims for
28

1 relief in the Complaint.¹ Defendant argues that Plaintiffs have
2 failed to state a claim upon which relief can be granted, and
3 requests that all of Plaintiffs' claims be dismissed. It is
4 further argued that Plaintiffs' state law and non-bankruptcy law
5 federal claims are preempted by the Bankruptcy Code.

6 The court reviews the Complaint for a Motion to Dismiss to
7 determine whether the Plaintiffs have presented a "short and plain
8 statement showing that the pleader is entitled to the relief"
9 required by Federal Rule of Civil Procedure 8(a) and Federal Rule
10 of Bankruptcy Procedure 7008, as applied by the Supreme Court in
11 *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), and *Bell Atl. Corp. v.*
12 *Twombly*, 550 U.S. 544 (2007).

13 It is alleged that Defendant is a creditor which asserts a
14 secured claim in the Plaintiffs' Chapter 13 case.² The claim is
15 asserted to be secured by Plaintiffs' residence. It is further
16 alleged that Defendant filed Proof of Claim No. 4 in the bankruptcy
17 case which misstates the amount of the claim and the amount of the
18 arrearage owed by Plaintiffs.

19 The First Claim for Relief stated in the Complaint is an
20 objection to Defendant's Proof of Claim. In the Second through
21 Eighth Claims for Relief, Plaintiffs assert claims arising under
22 California Rosenthal Fair Debt Collection Practices Act, California
23 Civil Code §§ 1788-1788.32 ("Rosenthal Act"), Negligence, Fraud,
24 the Real Estate Settlement Procedures Act, 12 U.S.C. § 2601 et.

25
26 ¹ The Motion to Dismiss has been set for hearing on the notice
27 required by Local Bankruptcy Rule 9014-1(f). Thirty-one days notice
28 of the hearing was provided, with 28 days required under this Local
Rule.

² Bankr. E.D. Cal. 13-31975.

1 seq. ("RESPA"); Breach of Contract, and Conversion. Other than
2 RESPA, all other claims arise under California state law.
3 Complaint, Dckt. 1.

4 DISCUSSION

5 The court considers each Cause of Action set forth in
6 Plaintiffs' Complaint, and evaluates the sufficiency of Plaintiffs'
7 allegations and whether they pass muster under Federal Rule of
8 Civil Procedure 12(b)(6). The court will not dismiss the cause of
9 action assessed, unless it appears beyond doubt that the Plaintiffs
10 can prove no set of facts in support of their claim which would
11 entitle them to the relief sought. *Williams v. Gorton*, 529 F.2d
12 668, 672 (9th Cir. 1976).

13 First Claim for Relief

14 Defendant argues that Plaintiffs' First Claim for Relief,
15 Objecting to Defendant's Proof of Claim, fails because Plaintiffs
16 have failed to meet their burden in pleading sufficient allegations
17 to negate the *prima facie* validity of Defendant's Proof of Claim,
18 and because Federal Rule of Bankruptcy Procedure 7001 does not
19 provide for the adjudication of an objection for claim in an
20 adversary proceeding.

21 Federal Rule of Bankruptcy Procedure 3007(b) expressly
22 prohibits a party in interest from including a demand for relief of
23 a kind specified in Federal Rule of Bankruptcy Procedure 7001 in an
24 objection to claim. Wells Fargo Bank, N.A. provides no legal
25 authority for its statement that a party in interest is prohibited
26 from including an objection to claim in an adversary proceeding
27 asserting demands for relief pursuant to Rule 7001. In fact, it
28 appears that Wells Fargo Bank, N.A. has either ignored, or withheld

1 from the court, the express language of Federal Rule of Bankruptcy
2 Procedure 3007(b) which states (emphasis added);

3 (b) Demand for Relief Requiring an Adversary Proceeding.
4 A party in interest shall not include a demand for relief
5 of a kind specified in Rule 7001 in an objection to the
allowance of a claim, **but may include the objection in an
adversary proceeding.**

6 This Federal Rule of Bankruptcy Procedure clearly and expressly
7 authorizes the objection to claim to be part of an adversary
8 proceeding against that creditor when there are other demands for
9 relief for which an adversary proceeding is filed.³

10 Federal Rule of Bankruptcy Procedure 7001 allows for
11 proceedings to determine the validity, priority, or extent of a
12 lien or other interest in property (other than objections to claims
13 of exemptions). Here, Plaintiffs seek a determination of the
14 Defendant's security interest in the deed of trust on Plaintiffs'
15 real property, and the exact amount owed on the Defendant's Claim.

16 Further, Section 502(a) provides that a claim supported by a
17 Proof of Claim is allowed unless a party in interest objects. Once
18 an objection has been filed, the court may determine the amount of
19 the claim after a noticed hearing. 11 U.S.C. § 502(b). It is
20 settled law in the Ninth Circuit that the party objecting to a
21 proof of claim has the burden of presenting substantial factual
22 basis to overcome the *prima facie* validity of a proof of claim and
23 the evidence must be of probative force equal to that of the
24 creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d

25
26 ³ When a party's lead contention is bereft of any legal
27 authority it does not bode well for the credibility of the
28 sophisticated creditor, lawyer, or law firm representing the creditor.
Often it is indicative of canned pleadings which are passed out by the
creditor to various local counsel with instructions to not change
anything.

620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

Not all Proof of Claims are deserving of this presumption of prima facie validity, however; only a properly completed and filed proof of claim is prima facie evidence of the validity and amount of a claim. Fed. R. Bankr. P. 3001(f). A proof of claim that lacks the documentation required by Rule 3001(c) does not qualify for the evidentiary benefit of Rule 3001(f). However, a lack of *prima facie* validity is not, by itself, a basis to disallow a claim. The court must look to 11 U.S.C. § 502(b) for the grounds to disallow a claim. *In re Heath*, 331 B.R. 424, 426 (B.A.P. 9th Cir. 2005).

Here, the Defendant, Wells Fargo Bank, filed Proof of Claim No. 4 on the claims registry of the Plaintiffs' pending bankruptcy case, Case No. 13-31975-E-13. The Proof of Claim filed asserts a claim of \$96,957.30, of which the basis for perfection is a Mortgage/Deed of Trust. The amount of arrearage at the time the case was filed is listed as \$32,856.92. Proof of Claim No. 4, filed January 4, 2014, Case No. 13-31975. As Plaintiffs point out in the Complaint, the Mortgage Proof of Claim Attachment filed as supporting documentation to the Defendant's Proof of Claim contains inconsistent figures.

The Mortgage Proof of Claim Attachment lists the principal due as \$73,238.69. The total amount listed as the amount necessary to cure the default as of the petition date is \$32,856.92. The addition of both of those numbers totals \$106,095.61, which is over \$9,000.00 beyond the stated claim. The inconsistencies on the face of the Defendant's Proof of Claim itself negates the *prima facie* validity of the claim. The lack of *prima facie* validity of the

1 claim, is not by itself a basis to disallow the claim, but the
2 Plaintiffs have stated sufficient allegations in challenging the
3 presumption of *prima facie* validity of Defendant's Claim.

4 The Motion to Dismiss the Plaintiffs' First Claim for Relief
5 is denied.

6 **Second Claim For Relief**

7 Defendant states that the Plaintiffs' Second Claim for Relief
8 for violation of the Rosenthal Act fails because it is preempted by
9 the Bankruptcy Code. Further, that even if Plaintiffs' claim is
10 not preempted by the Bankruptcy Code, it fails as a matter of law
11 because Defendant is not a "debt collector" as defined under the
12 Rosenthal Act.

13 **Rosenthal Act Statutory Definition of Debt Collector**

14 This court has previously addressed, and rejected, the
15 contention that merely because a creditor has a secured claim it
16 cannot be a "debt collector" under the Rosenthal Act. See *Landry*
17 *v. Bank of America, N.A. (In re Landry)*, 493 B.R. 541 (Bankr. E.D.
18 Cal. 2013). Some trial courts have interpreted the Rosenthal Act
19 to exclude mortgage service companies, original creditor, or a
20 purchaser of a debt from the statutory definition of "debt
21 collector" under the Rosenthal Act and the Federal Fair Debt
22 Collection Practices Act⁴ ("FDCPA") when the debt is secured. The
23 rationale for this conclusion is that the activities are related to
24 an ultimate foreclosure on real property securing the debt.
25 Defendant in this Adversary Proceeding and the defendants in *Landry*
26 cite a series of mostly unreported decisions from several district
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28 ⁴ 15 U.S.C. §§ 1692a et seq.

1 courts. These decision include *Patacsil v. Wilshire Credit*
2 *Corporation*;⁵ *Pittman v. Barclays Capital Real Estate, Inc.*;⁶ *Pok*
3 *v. American Home Mortgage Servicing, Inc.*;⁷ *Gallegos v. Recontrust*
4 *Co.*;⁸ *Fuentes v. Deutsche Bank*;⁹ *Padayachi v. Indymac Bank*;¹⁰ *Sipe*
5 *v. Countrywide Bank*;¹¹ *Pontiflet-Moore v. GMAC Mortgage*;¹² and *Rosal*
6 *v. First Federal Bank of California*.¹³

7 Defendant adds several cases to the list, the most recent
8 being *Hepler v. Washington Mutual Bank, F.A.*¹⁴ In reliance on
9 *Izenberg v. ETS Services, LLC*,¹⁵ the *Hepler* court concluded that
10 foreclosure under a mortgage (and demanding payment of monies to
11 prevent the foreclosure) does not constitute a debt under the
12 Rosenthal Act. However, the *Izenberg* court determined that the
13 plaintiff did not identify what provisions of the Rosenthal Act had
14 been violated or allege that the defendant was a "debt collector."¹⁶
15 The *Izenberg* court also concluded that foreclosure on a mortgage

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17 ⁵ 2010 U.S. Dist. LEXIS 10414, at *8-9 (E.D. Cal. Feb. 5 2010)

18 ⁶ 2009 U.S. Dist. LEXIS 34885, at *3 (S.D. Cal. Apr. 24, 2009)

19 ⁷ 2010 U.S. Dist. LEXIS 9016, at *7-8 (E.D. Cal. Feb. 2, 2010)

20 ⁸ 2009 U.S. Dist. LEXIS 6365, at *3 (S.D. Cal. Jan. 29, 2009)

21 ⁹ 2009 U.S. Dist. LEXIS 57931, at *3 (S.D. Cal. July 8, 2009)

22 ¹⁰ 2010 U.S. Dist. LEXIS 46115, at *6 (N.D. Cal. April 7, 2010)

23 ¹¹ 2010 U.S. Dist. LEXIS 70320, at *46-*47 (E.D. Cal. July 13,
2010)

24 ¹² 2010 U.S. Dist. LEXIS 11043, at *6 (E.D. Cal. Jan. 15, 2010)

25 ¹³ 671 F. Supp. 2d 1111, 1135 (N.D. Cal. 2009)

26 ¹⁴ 2009 WL 1045470 at *4 (C.D. Cal. 2009)

27 ¹⁵ 589 F. Supp. 2d 1193, 1199 (C.D. Cal. 2008)

28 ¹⁶ *Id.* at 1199

1 did not constitute a debt because "it does not appear that
2 plaintiff can cure this deficiency." It is not explained how a
3 consumer debtor's inability to pay a debt removes it from these
4 debt collection laws. Also, it is not explained how taking a
5 consumer debtor's property through a private power of sale is not
6 obtaining payment on a debt from the debtor.

7 Many of the cases relied on by Defendants cite to *Ines v.*
8 *Countrywide Home Loans, Inc.*,¹⁷ as the seminal case for the
9 proposition that a debt secured by a deed of trust, and a person
10 trying to obtain payment on that debt. The court in *Ines* came to
11 the conclusion that since foreclosing on real property is not the
12 collection of a debt under the FDCPA, then it would similarly not
13 be a debt under the Rosenthal Act because some provisions of the
14 FDCPA have been incorporated into the Rosenthal Act. As discussed
15 herein, the incorporation of several FDCPA provisions into the
16 Rosenthal Act does not amend the California definition of debt
17 collector under the Rosenthal Act and replace it with the more
18 limited definition under the FDCPA.

19 The court also notes that a proposition that a debt is not
20 subject to the FDCPA if it is secured by real or personal property,
21 and therefore neither should the collection of such debts be
22 subject to the Rosenthal Act, is not universally accepted. One
23 example of a Circuit Court of Appeals rejecting this argument is
24 *Wilson v. Draper & Goldberg, P.L.L.C.*,¹⁸ in which that Court
25 concluded that the debt secured by a deed of trust continued to be
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27 ¹⁷ 2008 U.S. Dist. LEXIS 88739at * 3 (S.D. Cal. Nov. 3, 2008).

28 ¹⁸ 443 F.3d 373 (4th Cir. 2006).

1 subject to the FDCPA even after the foreclosure was commenced.

2 We disagree. Wilson's "debt" [secured by a deed of
3 trust] remained a "debt" even after foreclosure
4 proceedings commenced. See *Piper v. Portnoff Law*
5 *Assocs.*, 396 F.3d 227, 234 (3d Cir. 2005) ("The fact that
6 the [Pennsylvania Municipal Claims and Tax Liens Act]
7 provided a lien to secure the Pipers' debt does not
8 change its character as a debt or turn PLA's
9 communications to the Pipers into something other than an
10 effort to collect that debt."). Furthermore, Defendants'
11 actions surrounding the foreclosure proceeding were
12 attempts to collect that debt. See *Romea v. Heiberger &*
13 *Assocs.*, 163 F.3d 111, 116 (2d Cir. 1998) (concluding
14 that an eviction notice required by statute could also be
15 an attempt to collect a debt); *Shapiro & Meinhold v.*
16 *Zartman*, 823 P.2d 120, 124 (Colo. 1992) ("[A] foreclosure
17 is a method of collecting a debt by acquiring and selling
18 secured property to satisfy a debt.").

19 Defendants' argument, if accepted, would create an
20 enormous loophole in the Act immunizing any debt from
21 coverage if that debt happened to be secured by a real
22 property interest and foreclosure proceedings were used
23 to collect the debt. We see no reason to make an
24 exception to the Act when the debt collector uses
25 foreclosure instead of other methods. See *Piper*, 396 F.3d
26 at 236 ("We agree with the District Court that if a
27 collector were able to avoid liability under the [Act]
28 simply by choosing to proceed *in rem* rather than *in*
personam, it would undermine the purpose of the
[Act].") (internal quotation marks omitted).¹⁹

1 Other cases rejecting a non-statutory exemption from the FDCPA
2 or Rosenthal Act because the debt is secured by real or personal
3 property include: *Glazer v. Chase Home Finance LLC*,²⁰ (finding a
4 home loan is a debt subject to the FDCPA, which governs the conduct
5 of debt collectors for both secured and unsecured debts); *Reese v.*
6 *Ellis, Painter, Ratteree & Adams, LLP*,²¹ (finding a promissory note
7 secured by a mortgage is a debt subject to the FDCPA); *Vargas v.*

26 ¹⁹ *Id.* at 376.

27 ²⁰ 704 F.3d 453, 460 (6th Cir. 2013).

28 ²¹ 678 F.3d 1211, 1216-1217 (11th Cir. 2012).

1 *HSBC Bank USA, N.A.*,²² (finding the FDCPA covers foreclosure-related
2 debt collection activities); *McGrew v. Countrywide Home Loans,*
3 *Inc.*,²³ (stating “[i]t is plain that the California Legislature
4 understands the Rosenthal Act may apply to foreclosure
5 proceedings...the omission of the lenders and servicers from Cal.
6 Civ. Code § 2924(b) means that such actors may be held liable for
7 any unlawful debt collection activities during foreclosure.”);
8 *Castrillo v. American Home Mortgage Servicing, Inc.*,²⁴ (finding a
9 debt collector is not immunized from liability for violating the
10 FDCPA merely because the debt is secured by a deed of trust and the
11 collector is proceeding with a foreclosure sale); and *Kojetin v.*
12 *C U Recovery, Inc.*,²⁵ (finding a promissory note secured by a
13 vehicle is a debt subject to the FDCPA).

14 **Statutory Construction of the Rosenthal Act**

15 The court’s analysis begins with the plain language of the
16 Rosenthal Act itself. It is incumbent on this court to interpret
17 and apply state law as would the California Supreme Court.²⁶ The
18 rules of statutory construction utilized by the California Supreme
19 Court are essentially the same as used by the courts for
20 interpreting federal law. To determine the intent of the statute
21 or ordinance, the court first looks to the plain language and
22 ordinary meaning of the words used. The words are read in context

24 ²² 2012 U.S. Dist. LEXIS 128661, at *16 (S.D. Cal. 2012).

25 ²³ 628 F. Supp. 1237, 1243 (S.D. Cal. 2009).

26 ²⁴ 670 F. Supp. 2d 516, 523-24 (E.D. La. 2009).

27 ²⁵ 212 F.3d 1318 (8th Cir. 2000).

28 ²⁶ *Aetna Cas. & Sur. Co. v. Sheft*, 989 F.2d 1105, 1108 (9th Cir.
1993).

1 of the statute, considering the nature and purpose of the
2 enactment. If the language is clear, then no further
3 interpretation of the statute is necessary. If the language is
4 ambiguous, then the court considers extrinsic evidence, which
5 includes the legislative history, public policy, and the statutory
6 scheme of which the statute is a part.²⁷ Finally, if after
7 reviewing the plain language and extrinsic aids the meaning of the
8 statute remains unclear, the court, proceeding cautiously, applies
9 reason, practicality, and common sense to the statute.²⁸

10 **Basic Statutory Definitions Under the Rosenthal Act**

11 The California Legislature defines who is a "debt collector"
12 for purposes of California law in the Rosenthal Act as follows,

13 The term "debt collector" means any person who, in the
14 ordinary course of business, regularly, on behalf of
15 himself or herself or others, engages in debt collection.
16 The term includes any person who composes and sells, or
17 offers to compose and sell, forms, letters, and other
collection media used or intended to be used for debt
collection, but does not include an attorney or counselor
at law.²⁹

18 California law defines "debt collection," to be "any act or
19 practice in connection with the collection of consumer debts."³⁰

20 A consumer debt is statutorily defined to be "money, property or
21 their equivalent, due or owing or alleged to be due or owing from
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23

24 ²⁷ *Professional Engineers in California Government v. Kempton*, 40
25 Cal. 4th 1016, 1037 (2007).

26 ²⁸ *Woodland Park v. City of East Palo Alto Rent Stabilization*
27 *Board*, 181 Cal. App. 4th 915, 920 (2010).

28 ²⁹ Cal. Civ. Code § 1788.2(c).

³⁰ *Id.* § 1788.2(b).

1 a natural person by reason of a consumer credit transaction."³¹
2 Finally, a "consumer credit transaction" is statutorily defined to
3 be "a transaction between a natural person and another person in
4 which property, services or money is acquired on credit by that
5 natural person from such other person primarily for personal,
6 family, or household purposes."³²

7 This definition of "debt collector" is very broad, requiring
8 only,

- 9 A. That a person (natural or fictitious, § 1788.2(g)),
- 10 B. In the ordinary course of his, her, or its business,
- 11 C. On behalf of him/her/itself or others,
- 12 D. Engage in any act or practice in connection with the
13 collection of,
- 14 E. Money, property or their equivalent, due or owing
relating to,
- 15 F. A transaction between a natural person and another
16 person,
- 17 G. For property, services or money is acquired on credit by
that natural person from such other person, and
- 18 H. Was primarily for personal, family, or household purposes
19 of the natural person.

20 Nothing in the statutory definition excludes a consumer debt
21 from the Rosenthal Act merely because it is secured by real or
22 personal property. Further, nothing in the statutory definition
23 excludes a person from the Rosenthal Act merely because he, she, or
24 it is attempting to collect a consumer debt that is for a
25 transaction that he, she or it entered into with the consumer. By
26

27 ³¹ *Id.* § 1788.2(f).

28 ³² *Id.* § 1788.2(e).

1 its plain language, the term "debt collector" as used in the
2 Rosenthal Act includes a creditor who is attempting to collect any
3 consumer debt owed to that creditor.³³

4 In 1999 the California Legislature grafted several FDCPA
5 provisions onto the Rosenthal Act. California Code of Civil
6 Procedure § 1788.17 provides,

7 Notwithstanding any other provision of this title, every
8 debt collector collecting or attempting to collect a
9 consumer debt shall comply with the provisions of
10 Sections 1692b to 1692j, inclusive, of, and shall be
11 subject to the remedies in Section 1692k of, Title 15 of
12 the United States Code. However, subsection (11) of
13 Section 1692e³⁴ and Section 1692g³⁵ shall not apply to any
14 person specified in paragraphs (A) and (B) of subsection
15 (6) of Section 1692a of Title 15 of the United States

13 ³³ The widely used California Practice Guide, *Enforcement of*
14 *Judgments and Debts*, also states, "**Creditors included:** Thus, the state
15 FDCPA [Rosenthal Act] applies both to *third party debt collectors*
16 (e.g. collection agencies) and to **creditors who regularly collect**
17 **consumer debts.**" California Practice Guide, *Enforcement of Judgments*
18 *and Debts* ¶ 2:127 (Judge Alan M. Ahart, The Rutter Group 2012, Rev.
19 # 1 2011 (emphasis in original)).

17 ³⁴ 15 U.S.C. 1692e(11) requires that the FDCPA debt collector
18 provide the Mini-Miranda, a disclosure in the initial written
19 communication, and initial oral communication if it precedes the
20 initial written communication, with the debtor that the communication
21 is from a debt collector and that it is an attempt to collect a debt.

20 ³⁵ 15 U.S.C. § 1692g requires that the initial written
21 communication disclose to the debtor (1) the amount of the debt,
22 (2) the name of the creditor to whom the debt is owed, (3) a statement
23 if the debtor does not dispute the debt in writing within 30 days the
24 debt collector will assume the debt is valid, (4) that if the debt is
25 disputed in the 30-day period the debt collector will obtain
26 verification of the debt from the creditor, and (5) that upon written
27 request within the 30-day period the debt collector will provide the
28 debtor with the name and address of the original creditor, if
different from the current creditor for whom the debt is being
collected.

26 A statutory exception is provided in 1692(g)(e) that forms and
27 notices not relating to the collection of the debt and required by the
28 Internal Revenue Code (26 U.S.C. §§ 1 et seq.), title V of
Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801 et seq.), or federal or
state law relating to notice of data security breach or privacy are
not treated as a "communication" under the FDCPA.

1 Code or that person's principal. The references to
2 federal codes in this section refer to those codes as
they read January 1, 2001.

3 The California Legislature carefully excluded a limited
4 subclass of Rosenthal Act statutorily defined debt collectors from
5 only two of the state law obligations arising under grafted on
6 15 U.S.C. § 1692e(11) (initial disclosure, commonly called the
7 Mini-Miranda, to be given in the first collection communication
8 with the consumer debtor) and § 1692g (requirement to validate the
9 debt if consumer requests in writing within 30 days of the initial
10 collection communication). However, all of the other FDCPA
11 provisions grafted onto the Rosenthal Act apply in full force and
12 effect for all Rosenthal Act defined debt collectors.

13 The subclass of Rosenthal Act defined debt collectors given an
14 exemption from only these two provisions are (1) "any officer or
15 employee of a creditor while, in the name of the creditor,
16 collecting debts for such creditor;" or (2) "any person while
17 acting as a debt collector for another person, both of whom are
18 related by common ownership or affiliated by corporate control, if
19 the person acting as a debt collector does so only for persons to
20 whom it is so related or affiliated and if the principal business
21 of such person is not the collection of debts;...."³⁶ Clearly, the
22 only reason that such exceptions to only these two provisions were
23 required to be created by the California Legislature to the
24 definition of a Rosenthal Act debt collector is that officers or
25 employees of the creditor, the creditor, and a creditor owned and
26 controlled collection agency subsidiary, are otherwise within the

27
28 ³⁶ 15 U.S.C. 1692a(6)(A), (B).

1 broad Rosenthal Act definition of a debt collector.

2 In considering the Defendant's argument and the authorities it
3 has cited, it is critical to understand that the FDCPA statutory
4 definition of "debt collector" differs significantly from the
5 California state law definition of a debt collector under the
6 Rosenthal Act. Under the FDCPA a debt collector is defined to be,

7 **[a]ny person who** uses any instrumentality of interstate
8 commerce or the mails in any business the principal
9 **regularly collects** or attempts to collect, directly or
10 indirectly, **debts owed or due or asserted to be owed or**
11 **due another.** Notwithstanding the exclusion provided by
12 clause (F) of the last sentence of this paragraph, the
13 **term includes any creditor who,** in the process of
14 collecting his own debts, **uses any name other than his**
15 **own which would indicate that a third person is**
16 **collecting or attempting to collect such debts.** For the
17 purpose of section 808(6) [15 UCS § 1692f(6)], such term
18 also includes any person who uses any instrumentality of
19 interstate commerce or the mails in any business the
20 principal purpose of which is the enforcement of security
21 interests....³⁷

22 First, with the limited exception of a creditor using an alias
23 to make it appear that a third-party is involved, the FDCPA defined
24 debt collector is limited to a person attempting to obtain payment
25 on an obligation which was originally owed to another person.
26 Commonly an FDCPA covered debt collector is called a "third-party
27 debt collector." (The original creditor and debtor being the first
28 two parties to the transaction.)

29 In grafting the FDCPA onto state law, the California
30 Legislature recognized this difference, creating the limited
31 exceptions for the Mini-Miranda and validation notice requirements
32 for creditors who are debt collectors under the Rosenthal Act.

³⁷ 15 U.S.C. § 1692a(6) (emphasis added).

1 However, the basic provisions of the Rosenthal Act that a person
2 shall not lie, cheat, steal, threaten, or abuse a consumer in
3 attempting to obtaining payment on a consumer debt do not interfere
4 with the good faith collection of the consumer debt - whether it be
5 secured or unsecured. To the extent that state law provides a
6 procedure for obtaining payment on the debt, such as a statutory
7 non-judicial foreclosure process, the California Legislature has
8 provided the creditor, third-party debt collector, servicing
9 agency, and consumer with clear benchmarks by which the collection
10 activities can be measured. There is nothing inconsistent with the
11 requirements of the Rosenthal Act and it being applied to a
12 creditor with a secured claim.

13
14 **State Law Provides an Express Exemption From The
Rosenthal Act Only For The Trustee Under a Deed of Trust**

15 California Civil Code § 2924 provides a statutory exemption
16 from the Rosenthal Act for a trustee under a deed of trust as
17 follows,

18 In performing acts required by this article, the trustee
19 shall incur no liability for any good faith error
20 resulting from reliance on information provided in good
21 faith by the beneficiary regarding the nature and the
22 amount of the default under the secured obligation, deed
of trust, or mortgage. **In performing the acts required by
this article, a trustee shall not be subject to Title
1.6c (commencing with Section 1788) of Part 4.**³⁸

23 The California Legislature has carefully constructed the
24 exemption to apply only (1) to the trustee under a deed of trust
25 and (2) only to that trustee performing the acts required under
26 Article 1, Mortgages in General, of Chapter 2, Mortgages, of
27

28 ³⁸ Cal. Civ. Code § 2924(b) (emphasis added).

1 Title 14 of the California Civil Code, Lien. In enacting this
2 exemption from the Rosenthal Act, the California Legislature has
3 clearly limited the acts of a trustee exercising the powers under
4 a deed of trust. The California Legislature has not created, or
5 intended to create an implied, free ranging exemption by which a
6 trustee under a deed of trust (and thereby the creditor owed the
7 consumer debt) becomes an unregulated debt collector for any and
8 all purposes.

9 If Defendant was correct that the Rosenthal Act did not apply
10 to debts which were secured by real property or for which
11 foreclosure proceedings could be commenced or were being
12 prosecuted, then no legislative reason would have existed for
13 enacting California Civil Code § 2924(b).

14 **Legislative History of the Rosenthal Act³⁹**

15 Given the dearth of statutory analysis presented to the court
16 by the parties, in addition to the plain language of the statute,
17 the court has reviewed the legislative history available from the
18 California State Archives maintained by the California Secretary of
19 State. California Senate Bill 237, 1977, is the legislation by
20 which the Rosenthal Act (formerly known as the Robbins-Rosenthal
21 Fair Debt Collection Practices Act) was enacted. It is clear from
22 the legislative history that the plain language of the statute
23 means what it says - all debt collectors, whether original
24 creditors, agents of original creditors, or third-party collection
25 agencies, for all consumer credit transaction debts, whether

27 ³⁹ The legislative history documents are an Addendum to this
28 court's reported decision in *Landry*, and may be reviewed using PACER
access to the court's public records, at the courthouse itself, or
using commercial case reporting services.

1 secured or unsecured, are covered by the Rosenthal Act.

2 The Assembly Judiciary Committee Analysis issued for the
3 August 11, 1977 hearing on for SB 237, states,

4 This measure governs all debt collection practices
5 arising from the extension of credit if the credit was
6 obtained primarily for personal, family, or household
7 purposes. Regulated **debt collectors include any person**
8 **who, in the ordinary course of business, on behalf of**
9 **himself or others, engages in debt collection** and any
10 person who composes and sells forms, letters, and other
collection media used for debt collection. Debt
collectors currently licensed by the Bureau of
Collections and Investigations [traditional third-party
collection agencies] would be subject to regulation by
this measure. Attorneys are specifically exempted.⁴⁰

11 After SB 237 was passed by the Legislature, the California
12 Department of Consumer Affairs issued its Enrolled Bill Report to
13 then Governor Edmund G. Brown, Jr., stating,

14 The collection practices of collection agencies licensed
15 by the Bureau of Collection and Investigative Services
16 [traditional third-party collection agencies] are
regulated by the Bureau. Licensed collection agencies
are responsible for about 10% of the debt collection in
California. **The other 90% is performed by in-house**
17 **collectors (for banks, retailers, finance companies, and**
18 **so on)...**

19 The Robbins-Rosenthal Fair Debt Collection Practices Act
20 [renamed the Rosenthal Act in AB 969, 1999] would be **a**
21 **comprehensive act governing the debt collection practices**
22 **of all person who in the ordinary course of business on**
23 **behalf of themselves or others engage in the collection**
24 **of consumer debts. The Act would thus apply to debt**
25 **collectors licensed by the Bureau of Collection and**
26 **Investigative Services (CIS) and to in-house collectors**
27 **(such as bankers, credit unions, savings and loans,**
28 **personal property brokers, industrial loan companies, and**
retailers)...

⁴⁰ Fair Debt Collection Practices Act Bill Digest: Hearing on
California SB 237 Before the Assembly Comm. on Judiciary, August 11,
1977 (emphasis added).

1 A. SPECIFIC FINDINGS

2 The Robbins-Rosenthal Fair Debt Collection Practices Act
3 would be a comprehensive act governing the debt
4 collection practices of **all persons who in the ordinary**
5 **course of business on behalf of themselves or others**
6 engage in the collection of consumer debts. The **Act would**
7 **thus apply to** debt collectors licensed by the Bureau of
8 Collection and Investigative Services (CIS) and to
9 **in-house collectors (such as bankers,** credit unions,
10 savings and loans, personal property brokers, industrial
11 loan companies, and retailers)...

12 D. RECOMMENDATION: Sign

13 The Department of Consumer Affairs worked with Senator
14 Robbins on the August amendments and we are satisfied
15 that this amended bill would constitute a significant
16 improvement in consumer protection against unfair debt
17 collection practices. While the bill's provisions are in
18 some cases less strict than the new regulations governing
19 the collection agencies licensed by the Bureau of
20 Collection and Investigative Services, **we believe that**
21 **the bill's impact on the presently unregulated collection**
22 **practices of in-house collectors -- whose activities make**
23 **up more than 90% of debt collection --** would represent a
24 positive gain for consumers.⁴¹

25 The Rosenthal Act was enacted specifically to make the
26 creditor, not merely the third-party collection agency, subject to
27 the California debt collection laws. This is consistent with the
28 plain language of the statute defining debt collector expansively,
29 so as to address the 90 percent of the otherwise unregulated
30 creditor debt collection activities.

31 The court has also reviewed the legislative history for the

32 ⁴¹ California Department of Consumer Affairs, Enrolled Bill
33 Report for SB 237, September 15, 1977 (emphasis added). See also
34 California Department of Finance, Enrolled Bill Report for SB 237,
35 September 15, 1977, stating (emphasis added),

36 This bill would substantially expand the coverage of debt
37 collection law. Under existing law, only the debt
38 collection practices of licensed collection agencies are
39 regulated. **This bill would increase the coverage of such**
40 **law as to include in-house debt collectors such as banks and**
41 **retailers** (approximately 90 percent of the debt collectors
42 in the State).

1 1999 amendments to the Rosenthal Act, AB 969, by which specific
2 provisions of the FDCPA were made part of state law. The Senate
3 Rules Committee Report, issued for the Third Reading of AB 969 on
4 the Senate Floor, states,

5 This bill provides that **every debt collector collecting**
6 **or attempting to collect a consumer debt shall comply**
7 **with the provisions of Sections 1692b to 1692j,**
8 inclusive, of Title 15 of the United States Code. These
9 sections provide, among other provisions, that a
10 collector may not harass, oppress, or abuse a debtor, nor
11 use obscene language. Third parties may only be
12 contacted with the debtor's permission.

13 ...

14 This dual scheme of regulation [FDCPA and Rosenthal Act]
15 can sometimes become confusing, rendering state law
16 unused. The sponsor argues this bill is needed in order
17 to establish clear lines of acceptable behavior, pointing
18 out that other states, such as Pennsylvania and
19 Massachusetts, have similarly incorporated federal
20 provisions to harmonize state and federal law. The
21 [California Attorney General] adds that, "**consistent**
22 **federal and state standards** would facilitate compliance
23 and enforcement and **provide a level playing field for all**
24 **engaged in debt collection activity.**"⁴²

25 The Senate Judiciary Committee Analysis contains similar
26 language that the FDCPA provisions shall apply to all debt
27 collectors (with the specified two exceptions), and adds the
28 further information from the sponsor of AB 969, the California
Attorney General,

21 The bill's sponsor, the Attorney General (AG) adds, "the
22 Attorney General's office has sponsored AB 969 to
23 **harmonize state and federal law by applying federal debt**
24 **collection standards and remedies to all parties defined**
25 **as debt collectors under California law.**"⁴³

26 Again, with the 1999 amendments the legislative history is

27 ⁴² California Senate Rules Committee, Senate Floor Analysis for
28 AB 969, July 23, 1999 (emphasis added).

⁴³ Hearing on AB 969 Before the California Senate Judiciary
Committee, 1999-2000 Regular Session, July 7, 1999 (emphasis added).

1 clear - all provisions of the Rosenthal Act, including the grafted
2 on FDCPA provisions (subject to the two express exceptions), shall
3 apply to all debt collectors as defined under the Rosenthal Act.
4 There is no evidence of any non-statutory intent or belief that an
5 unstated general exception was created using the federal definition
6 of debt collector to change the definition in the Rosenthal Act.

7 **Preemption by Bankruptcy Code**

8 Though Defendant may well be a "debt collector" as defined by
9 the Rosenthal Act, that does not result in it being subject to the
10 claim asserted in the Complaint. In the situation involving the
11 FDCPA, the Bankruptcy Appellate Panel of the Ninth Circuit has
12 stated that Congress did not intend for that Act and its debt
13 validation provisions to apply in context of proofs of claim filed
14 in bankruptcy case. Rather, a Chapter 13 debtor's remedy, to the
15 extent that creditor's proof of claim sought to recover on
16 time-barred or nonexistent debts, lay in objecting to proof of
17 claim. If the conduct is improper, the aggrieved party may seek
18 the proper award of sanctions or other relief provided as under
19 federal bankruptcy law. An alleged improper proof of claim is not
20 the opportunity to commence collateral proceedings under the FDCPA,
21 Rosenthal Act, and other non-bankruptcy law grounds and forsake the
22 comprehensive statutory process enacted by Congress. 11 U.S.C.
23 § 502. *B-Real, LLC v. Chaussee (In re Chaussee)*, 399 B.R. 225
24 (B.A.P. 9th Cir. 2008).

25 The Plaintiffs' Complaint, in the general and specific Second
26 Claim for Relief allegations, asserts that the Rosenthal Act has
27 been violated based on the following grounds.

28 ///

- 1 A. Plaintiffs object to Proof of Claim No. 4 filed by
2 Defendant.
- 3 B. Defendant had no right to file a proof of claim and by
4 doing so committed a misrepresentation of a debt in
5 violation of the Rosenthal Act.
- 6 C. The debt which is the subject of Defendant's claim was
7 satisfied in full prior to the commencement of this case.
- 8 D. Sanctions pursuant to Federal Rule of Bankruptcy
9 Procedure 9011 and Federal Rule of Civil Procedure 11 are
10 appropriate for Defendant's conduct in filing Proof of
11 Claim No. 4.

12 In a persuasive discussion, the Bankruptcy Appellate Panel for
13 the Ninth Circuit in an unpublished decision concluded that the
14 Rosenthal Act was completely preempted by the Bankruptcy Code in a
15 case where a debtor alleged that a creditor had filed a proof of
16 claim for a non-existent and/or time-barred debt in debtor's
17 bankruptcy case. *In re McCarther-Morgan*, BAP SC-08-1093KWMOJU,
18 2009 WL 7810817 (B.A.P. 9th Cir. Jan. 27, 2009)

19 The Ninth Circuit Court of Appeals has addressed the
20 preemption issue in connection with the Bankruptcy Code in a line
21 of cases tracing back to *MSR Exploration, LTD v. Meridian Oil,*
22 *Inc.*, 74 F.3d 910 (9th Cir. 1995). The Ninth Circuit Court of
23 Appeals recognized that the federal court conducting bankruptcy
24 proceedings (whether the district court judge or the bankruptcy
25 court judge) has exclusive federal jurisdiction for those matters.
26 There is not concurrent federal and state court jurisdiction over
27 bankruptcy matters.

28 Further, the Ninth Circuit Court of Appeals considered the
29 comprehensive structure of the Bankruptcy Code established by
30 Congress. This mitigates further against superimposing non-
31 bankruptcy law remedies over the Bankruptcy Code. The bankruptcy

1 claims process is one in which it is the Bankruptcy Code, Federal
2 Rule of Civil Procedure 11, Federal Rule of Bankruptcy Procedure
3 9011, and the inherent powers of the federal judges to "police" the
4 claims process and conduct of the parties.

5 In *MRS Exploration* the Ninth Circuit Court of Appeals rejected
6 a debtor's contention that the filing of a disputed proof of claim
7 could be the basis for an independent malicious prosecution claim.
8 In a subsequent decision, the Ninth Circuit Court of Appeals in
9 *Miles v. Okun (In re Miles)*, 430 F.3d 1083 (9th Cir. 2005),
10 concluded that the Bankruptcy Code provided the exclusive remedy
11 for damages arising from the improper filing of multiple
12 involuntary bankruptcy petitions against a debtor. The Court
13 determined that the various state law tort claims were preempted by
14 the Bankruptcy Code as they related to the conduct of the person
15 filing the involuntary bankruptcy petitions.

16 The fact that the bankruptcy judicial process preempts various
17 state law and non-bankruptcy law statutory and tort claims does not
18 leave a party without relief. As discussed by the Ninth Circuit
19 Court of Appeals in *Walls v. Wells Fargo Bank, N.A.*, 276 F.3d 502
20 (9th Cir. 2002), a claim alleging a violation of the discharge
21 injunction (11 U.S.C. § 524(a)) cannot be the basis for a private
22 right of action under the FDCPA. The proper remedy for an alleged
23 violation of the bankruptcy discharge injunction is to seek relief
24 through the federal court contempt powers.

25 The Plaintiffs argue in their Opposition to the Defendant's
26 Motion to Dismiss, Dckt. No. 14, that the provisions of the
27 Rosenthal Act are consistent with the Bankruptcy Code, and that
28 this cause of action is not preempted by the Bankruptcy Code.

1 While the federal court properly "Polices" the practices in the
2 court, including the filing of claims, through its inherent powers,
3 Rule 9011, and Rule 11, it is not for the Plaintiffs to create
4 enforcement rights were Congress provided for none.

5 For purposes of determining the propriety of a dismissal
6 before trial, allegations in the complaint are taken as true and
7 are construed in the light most favorable to the plaintiff.
8 *McGlinchy v. Shell Chemical Co.*, 845 F.2d 802, 810 (9th Cir. 1988);
9 *Kossick v. United Fruit Co.*, 365 U.S. 731, 731 (1961). All the
10 Plaintiffs assert is that Defendant filed a proof of claim they
11 dispute and that the proof of claim filed in federal court should
12 be the basis for asserting a state law claim under the Rosenthal
13 Act. That is incorrect. Plaintiffs may address their dispute
14 through the claims objection process and then seek relief for
15 damages under the proper procedures relating to claims made and
16 pleadings filed in federal court.

17 Further, Plaintiffs fail to allege misconduct which states a
18 claim for which the requested relief (based on a violation of the
19 Rosenthal Act) can be granted. The Complaint alleges the statutory
20 definitions of the Rosenthal Act and that the "debt has been
21 satisfied." Plaintiffs also allege that the Proof of Claim does
22 not accurately state the amount of the debt that is owed. While a
23 closer call than the other claims for relief, the court finds that
24 as pleaded Plaintiffs have not sufficiently made a "short and plain
25 statement of the claim showing that the pleader is entitled to
26 relief."

27 Plaintiffs' second cause of action is dismissed.

28 ///

1 **Fifth Cause of Action**

2 The courts are equally divided when looking at whether the
3 Real Estate Settlement Procedures Act is preempted by the
4 Bankruptcy Code. See, e.g., *In re Figard*,⁴⁴ (court finds that
5 Bankruptcy Code does not preempt provisions of Real Estate
6 Settlement Procedures Act, 12 U.S.C. § 2605(e)(2)); *In re Holland*,⁴⁵
7 (Bankruptcy Code does not preempt Real Estate Settlement Procedures
8 Act); *In re Nosek*,⁴⁶ (court finds Bankruptcy Code preempts Real
9 Estate Settlement Procedures Act and state statutory and common
10 law).

11 As the Defendant states, the Real Estate Settlement Procedures
12 Act creates a private rights of action to redress three types of
13 wrongful acts: (1) a payment of a kickback for real estate
14 settlement services (12 U.S.C. § 2607(d)); (2) requiring a buyer to
15 use a title insurer selected by the seller (12 U.S.C. § 2608(b));
16 and (3) a failure by a loan servicer to give proper notice of a
17 transfer of servicing rights or to respond to a Qualified Written
18 Request for information about a loan (12 U.S.C. § 2605(f)). A
19 RESPA claim based on payment for no services in violation of
20 12 U.S.C. § 2607 must be brought within one year of the violation.
21 12 U.S.C. § 2614; see also *Edwards v. First Am. Corp.*, 517 F. Supp.
22 2d 1199, 1204 (C.D. Cal. 2007); *Blaylock v. First Am. Title Ins.*
23 *Co.*, 504 F. Supp. 2d 1091, 1106 (W.D. Wash. 2007).

24 Here, Plaintiffs' Complaint is unclear as to what provision of
25

26 ⁴⁴ 382 B.R. 695, 2008 WL 501356 (Bankr. W.D. Pa. 2008)

27 ⁴⁵ 374 B.R. 409 (Bankr. D. Mass. 2007)

28 ⁴⁶ 354 B.R. 331 (D. Mass. 2006)

1 the Real Estate Settlement Procedures Act has been violated, and
2 what type of violation would entitle Plaintiffs to actual damages,
3 the requested statutory penalty of \$1,000.00, and attorney's fees
4 and costs. Plaintiffs merely state that the escrow analysis
5 provided in the Proof of Claim "does not conform to the RESPA," in
6 that the starting point of the escrow analysis does not take into
7 account the impound beginning balance, based on the payments made
8 from the pre-petition arrearage.

9 Although this is a specific allegation regarding the error
10 that Defendant may have committed in preparing the Proof of Claim,
11 Plaintiffs fail to allege the misconduct that fits the criteria of
12 the type of wrongful act contemplated and covered by the Real
13 Estate Settlement Procedures Act. Plaintiffs do not allege how the
14 miscalculated escrow analysis may rise to the level of misconduct
15 encompassed by the Real Estate Settlement Procedures Act, in
16 punishing acts that are committed during the origination of the
17 loan, or in notifying a mortgagee about the transfer of servicing
18 rights for a loan.

19 Additionally, this remedy under RESPA is stated to be based on
20 the filing of Proof of Claim No. 4 in the bankruptcy case. If the
21 only basis for the RESPA relief is the filing of a proof of claim,
22 the Bankruptcy Code is the controlling law. Plaintiff must seek
23 relief under the Bankruptcy Code, Federal Rules of Civil Procedure,
24 Federal Rules of Bankruptcy Procedure, and the inherent powers of
25 this court, not through an ancillary claim based on non-bankruptcy
26 law or procedure.

27 Thus, Plaintiffs' Fifth Cause of Action is dismissed.

28 ///

1 **Third, Fourth, Sixth, and Seventh Causes of Action**

2 Defendant argues that the Plaintiffs' Third Claim for Relief
3 for Negligence, Fourth Claim for Relief for Fraud and Intentional
4 Misrepresentation, Sixth Claim for Relief for Breach of Contract,
5 and Seventh Claim For Relief for Conversion each fails because they
6 are preempted by the Bankruptcy Code and Plaintiffs have failed to
7 plead sufficient facts to support a claim for each relief sought.

8 All of the Plaintiffs' Claims for Relief in the instant
9 Adversary Proceeding are based on the filing of Proof of Claim
10 No. 4 as the only grounds for negligence, fraud, misrepresentation,
11 breach of contract, and conversion. The remedial schemes of
12 11 U.S.C. §§ 501, 502, Federal Rules of Bankruptcy Procedure 3001-
13 3008, Federal Rule of Bankruptcy Procedure 9011, and the inherent
14 power of this court and the United States District Court establish
15 appropriate procedures for those who wish to contest a Proof of
16 Claim and remedies for misconduct by creditors in the claims
17 process.

18 All persons have the right to petition the court to assert
19 rights and defenses. Such conduct is generally privileged, subject
20 to very specific rights and remedies structured to avoid one
21 lawsuit spawning a multiplicity of lawsuits. *Rusheen v. Cohen*,
22 37 Cal. 4th 1048 (2008), *Jacob B. v. County of Shasta*, 40 Cal.4th
23 948, 956 (2007); *Johnson v. JP Morgan Chase Bank DBA Chase*
24 *Manhattan*, 536 F. Supp. 2d 1207, 1210-11 (E.D. Cal. 2008).

25 This is consistent with the Ninth Circuit rulings on federal
26 preemption of these types of state law claims relating to proofs of
27 claim and other pleadings (such as involuntary petitions) filed in
28 federal court. The proper remedies lie within that judicial

1 proceeding itself, not a myriad of state and other non-bankruptcy
2 law claims. Malicious prosecution, bankruptcy statutory remedies,
3 Rule 9011 compensatory and corrective sanctions, and the inherent
4 power sanctions of the bankruptcy and district (including punitive
5 sanctions) courts are the proper remedies. In addition, for proofs
6 of claim, submitting a fraudulent claim may subject the violating
7 party to a fine of up to \$500,000.00 and imprisonment of up to five
8 years. 18 U.S.C. §§ 152 and 3571.

9 Here, the Defendant Proof of Claim, Claim No. 4, on
10 January 15, 2014, in Plaintiffs' bankruptcy case. The Proof of
11 Claim asserted, as required by the Bankruptcy Code, what Defendant
12 advanced as its rights as a creditor. Plaintiff may object to
13 Proof of Claim No. 4 and have that dispute litigated as part of the
14 claims process in the bankruptcy case. In their Complaint,
15 Plaintiffs have made no allegation about the Defendant's
16 misconduct, other than the filing, preparation, and prosecution of
17 Defendant's Proof of Claim. The Plaintiffs offer no "short and
18 plain statement of the claim" for any other grounds upon which
19 relief is requested. The various state law claims by which
20 Plaintiffs now seek remedy are preempted by the bankruptcy claims
21 process and relief which Plaintiff may obtain thereto.

22 Thus, Plaintiffs' Third, Fourth, Sixth, and Seventh Causes of
23 Action are dismissed.

24 CONCLUSION

25 Having determined that the Plaintiffs have failed to state a
26 claim for relief under each of the following Claims for Relief, and
27 that each of them are preempted by the Bankruptcy Code, the Motion
28 is granted and the court dismisses the Second, Third, Fourth,

1 Fifth, Sixth, and Seventh Claims for Relief without prejudice. The
2 Motion is denied as to the First Claim for Relief.

3 This Memorandum Opinion and Decision constitutes the court's
4 Findings of Fact and Conclusions of Law pursuant to Federal Rule of
5 Civil Procedure 52(a) and Federal Rule of Bankruptcy Procedure
6 7052.

7 Dated: July 11, 2014

8
9 /s/
10 RONALD H. SARGIS, Judge
11 United States Bankruptcy Court
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