

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA  
MODESTO DIVISION

In re ) Case No. 10-91718-E-7  
)  
REY ANTHONY ZAVALA and )  
MICHELLE ARBOLEDA CATBAGAN, )  
)  
Debtor(s). )  
\_\_\_\_\_)  
)  
REY ANTHONY ZAVALA and ) Adv. Pro. No. 10-9042  
MICHELLE ARBOLEDA CATBAGAN, ) Docket Control No. PIL-1  
)  
Plaintiff(s), )  
v. )  
)  
WELLS FARGO BANK, N.A., )  
)  
Defendant(s). )  
\_\_\_\_\_)

ORDER

The Memorandum Opinion and Decision dated February 7, 2011, filed February 8, 2011, and reported at 2011 WL 47687 and 2011 Bankr. LEXIS 410, is amended as follows:

At page 3, line 7, the citation "*Iqbal*, *Id.*, p. 1941" is stricken and "*Iqbal*, 129 S. Ct. at 1941" is inserted in its place.


At page 9, line 14, the citation "*See, Gebhart v. Gaughan, Supra.*, 1210." is stricken and "*See Gebhart*, 621 F.3d at 1210." is inserted in its place.

1 At page 13, line 27, the word "ESTATE1" is stricken and the  
2 word "ESTATE" is inserted in its place.

3 At page 15, line 18, the word "DEBTOR" is stricken and the  
4 word "DEFENDANT" is inserted in its place.

5 Legal publishers are requested to make these corrections.

6 Dated: March 31, 2011

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8 RONALD H. SARGIS, Judge  
9 United States Bankruptcy Court  
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16 Plaintiff(s), )  
17 v. )  
18 Wells Fargo Bank, N.A., ) Ordered Published  
Defendant(s). )

19 MEMORANDUM OPINION  
20 AND DECISION

21 Rey Zavala and Michelle Catbagan, the Chapter 7 debtors,  
22 (collectively "Debtors") commenced this adversary proceeding  
23 against Wells Fargo Bank, N.A. ("WFB") asserting a violation of  
24 11 U.S.C. § 362(a)(3) and various state law claims premised on the  
25 alleged violation of the automatic stay. The Debtors contend that  
26 WFB violated the automatic stay when it refused to disburse monies  
27 owed by the Bank for two prepetition demand amounts in which the  
28 Debtors asserted an exemption. The demand for the monies was made

1 by the Debtors directly to WFB six days after the Chapter 7 case  
2 was filed. WFB did not comply with the Debtors' unilateral demand  
3 to turnover the monies, having sent a letter to the Chapter 7  
4 Trustee requesting instructions from the Chapter 7 Trustee for the  
5 accounts which are property of the bankruptcy estate.

6 The Debtors commenced this adversary proceeding sixteen days  
7 after filing the Chapter 7. In the complaint, the Debtors contend  
8 that the monies relating to the WFB accounts are not property of  
9 the bankruptcy estate, but their personal monies. WFB responded by  
10 filing the instant Motion to Dismiss For Failure to State a Claim,  
11 arguing that the monies relating to the two WFB accounts are  
12 property of the bankruptcy estate, and that the Debtors do not have  
13 any right to possess or control such property. Therefore, no  
14 violation of the automatic stay occurred as to the Debtors, the  
15 Debtors have no standing to allege a violation of the automatic  
16 stay as to the bankruptcy estate, and there is no basis for the  
17 alleged state law claims.

#### 18 STANDARD FOR MOTION TO DISMISS

19 In pleading claims for relief in federal court, a complaint  
20 "must contain a short and plain statement showing that the pleader  
21 is entitled to relief." Rule 8(a)(2), Federal Rules of Civil  
22 Procedure, and Rule 7008, Federal Rules of Bankruptcy Procedure.  
23 This requires more than a demand for relief or a formulaic  
24 recitation of generic horn book common law or statutory legal  
25 grounds for the elements of the claim. *Ashcroft v. Iqbal*, 556 U.S.  
26 \_\_\_, 129 S.Ct. 1937, 1949 (2009).

27 Rule 12(b)(6), Federal Rules of Civil Procedure, and Rule  
28 7012, Federal Rules of Bankruptcy Procedure, provide that a

1 defendant may obtain the dismissal of an adversary proceeding if  
2 the complaint fails to state a claim upon which relief can be  
3 granted. The Plaintiff is given the benefit of the doubt in  
4 reviewing such motions, and all allegations of material facts are  
5 taken as true and construed in the light most favorable to the  
6 nonmoving party. The United States Supreme Court in *Ashcroft v.*  
7 *Iqbal*, 129 S. Ct. at 1441, confirmed the standard to be used in  
8 considering a motion to dismiss. The plaintiff must allege  
9 sufficient factual matters to state a claim for relief that is  
10 plausible on its face. While the court must accept as true all  
11 factual allegations in the complaint, the same is not true for  
12 legal conclusions. "Threadbare recitals of the elements of a cause  
13 of action, supported by mere conclusory statements, do not  
14 suffice..." *Id.* Determining if a complaint states a plausible  
15 claim for relief is a context-specific task that requires the trial  
16 court to draw on its judicial experience and common sense. A  
17 complaint is not dismissed by the trial court for failure to state  
18 a claim unless it appears that the plaintiff can prove no set of  
19 facts, as alleged in the complaint and taken as true by the court,  
20 for which the plaintiff would be entitled to relief. *Balistreri v.*  
21 *Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1990).

22  
23 **FACTS AND CLAIMS ASSERTED BY THE  
DEBTORS IN THE COMPLAINT**

24 In the Complaint the Debtors assert that they hold and own two  
25 prepetition deposit accounts at WFB. When the Debtors attempted to  
26 access the monies after commencing the Chapter 7 case, WFB had  
27 placed a hold on the two accounts. WFB sent a letter to the  
28 Chapter 7 Trustee, Steven C. Ferlmann, requesting instructions for

1 payment of the monies for the two WFB accounts. A copy of the WFB  
2 letter sent to Trustee Ferlmann, is attached as Exhibit B and  
3 incorporated into the Complaint, and states (in pertinent part):

- 4 1. WFB received notice of the Debtors' bankruptcy petition.
- 5 2. "Sections 541 and 542 of the Bankruptcy Code require us  
6 to act in good faith to preserve the Estate Funds and  
7 follow your direction with regard to property of the  
8 estate."
- 9 3. When WFB received notice of the bankruptcy filing, "we  
checked the value of the debtor's account(s) on the  
10 filing date and the notice date, less identifiable Social  
11 Security payments."
- 12 4. "The low balance on the account(s) on or between those  
13 dates, \$6,079.63, became property of the bankruptcy  
14 estate . . . "
- 15 5. "The Estate Funds are in bankruptcy status, which means  
the funds are payable only to you or upon your order."
- 16 6. "The Estate Funds will remain in bankruptcy status until  
17 we receive direction from you regarding their disposition  
18 or on July 12, 2010, which is 31 days after the scheduled  
19 First Meeting of Creditors."

20 The Complaint continues to allege that the monies in the two  
21 WFB accounts have been exempted from the bankruptcy estate by  
22 listing them on in Schedule C filed in this case.<sup>1</sup> Schedule C is  
23 attached as Exhibit "C" to the Complaint and incorporated therein  
24 by the Debtors.

25 On May 10, 2010 (six days after the commencement of the  
26 Chapter 7 bankruptcy case) the Debtors through their counsel sent  
27 a letter to WFB demanding that all of the monies in the two WFB  
28 accounts be released directly to the Debtors. A copy of the letter  
sent by Debtors' counsel is attached as Exhibit D and incorporated  
into the Complaint, stating (in pertinent part),

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<sup>1</sup> Schedule "C" filed by the Debtors on May 4, 2010, claims  
\$2,517.54 as exempt in the WFB accounts. No amendment has been  
made by the Debtors to Schedule C in this case.

- 1        1.    "[S]chedule C of the debtors' petition claims all of the  
2           money as exempt pursuant to California Civil Procedure  
         Code §703.140, subd.(b)(5)."
- 3        2.    "All amounts being held by WFB, therefore, are exempt  
4           from the bankruptcy estate."<sup>2</sup>
- 5        3.    WFB has no right to hold such money and no right to  
6           adversely determine the exemption of the money from the  
         bankruptcy estate.
- 7        4.    WFB is directed to immediately terminate its  
8           administrative hold and provide written confirmation of  
         such termination to counsel for the Debtors.

9        The Complaint alleges five claims against WFB, all of which  
10       are based on WFB violating the automatic stay by failing to comply  
11       with the Debtors' demand. The first claim alleged is for violation  
12       of 11 U.S.C. § 362(a)(3),<sup>3</sup> based solely on WFB's refusal to  
13       disburse the monies in the two WFB accounts directly to the  
14       Debtors.

15       The other four claims alleged in the complaint are state law  
16       claims for conversion, unlawful business practices (California  
17       Business and Profession Code § 17200 *et. seq.*), intentional  
18       interference with statutory exemptions, and intentional infliction  
19       of emotional distress. Each of the state law claims is based  
20       solely on WFB refusing to turn over monies in the WFB accounts  
21       directly to the Debtors upon their demand.

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24       <sup>2</sup> Exhibit "B" to Complaint identifies that there is  
25       \$6,079.63 owed by WFB on the two accounts, well in excess of the  
         amount claimed as exempt.

26       <sup>3</sup> 11 U.S.C. §362(a)(3), staying,

27       (3) any act to obtain possession of property of the  
28       estate or of property from the estate or to exercise  
         control over property of the estate;...

1                   **WELLS FARGO BANK MOTION TO DISMISS**

2           WFB asserts that this adversary proceeding may properly be  
3 dismissed pursuant to Rule 12(b)(6) and Rule 7012 because it fails  
4 to state any claims upon which relief can be granted for these  
5 Debtors. The present motion is built on the foundation that the  
6 Debtors lack standing to assert claims because the obligations owed  
7 by WFB on the two accounts are property of the bankruptcy estate  
8 and under the sole control of the Chapter 7 trustee. The assets  
9 being property of the Estate and the only alleged violation of the  
10 automatic stay is as to property of the estate, 11 U.S.C.  
11 § 362(a)(3), no rights of the Debtors have been violated. Since no  
12 rights of the Debtors having been violated, these Debtors cannot  
13 assert personal claims against WFB based on the rights of a third-  
14 party, the bankruptcy estate.

15           For the conversion, California Unfair Business Practices Act,  
16 and negligent infliction of emotional distress claims, WFB argues  
17 that the Debtors' allegations in the Complaint do not assert any  
18 plausible personal right to, or control of, the accounts or monies  
19 owed on the WFB accounts which are property of the bankruptcy  
20 estate. Therefore, no rights of the Debtors are alleged to have  
21 been violated by WFB not complying with the Debtors' demand to pay  
22 money owed on the WFB accounts to the Debtors. The only alleged  
23 rights at issue, arising under 11 U.S.C. § 362(a)(3) are rights of  
24 the bankruptcy estate, which can be asserted only by the Chapter 7  
25 trustee.

26           **Debtors' Opposition**

27           The Debtors oppose this Motion, asserting that their \$2,517.54  
28 claim of exemption resulted in all of the monies in the two WFB



1 accounts being exempt from the bankruptcy estate. Therefore, WFB  
2 violated the automatic stay by refusing to accede to the demands of  
3 the Debtors to pay all of the monies owed on the two WFB accounts  
4 directly to the Debtors. The legal basis asserted by the Debtors  
5 is stated in *Mwangi v. Wells Fargo Bank, N.A.* 2010 Bankr. LEXIS  
6 2010 (Bankr. 9th Cir. 2010), a recent Ninth Circuit Bankruptcy  
7 Appellate Panel decision. The *Mwangi* opinion has not been  
8 published and is currently the subject of an appeal to the Ninth  
9 Circuit Court of Appeals.

10 Though the *Mwangi* decision is on appeal, this court gives due  
11 consideration to the analysis and conclusions made by the  
12 Bankruptcy Appellate Panel and relied upon by the Debtors. The  
13 *Mwangi* case related to the same WFB administrative pledge procedure  
14 as in this case and WFB seeking direction from a Chapter 7 trustee  
15 for prepetition accounts after receiving notice that a bankruptcy  
16 case has been commenced by a debtor.

17 **THE OBLIGATIONS OWED BY WELLS FARGO BANK**  
18 **ARE PROPERTY OF THE ESTATE**

19 The fundamental issue is what rights do these Chapter 7  
20 Debtors have to possess or control the two WFB accounts which are  
21 property of this bankruptcy estate. Upon the commencement of a  
22 bankruptcy case, "Deposits in the debtor's bank account become  
23 property of the estate under section 541(a)(1)." 5 COLLIER ON  
24 BANKRUPTCY ¶ 541.09, at p. 541-51 (Alan N. Resnick & Henry J.  
25 Sommer, eds., 15th rev. ed. 2010). See 11 U.S.C. §541(a).

26 As discussed by the panel in *Mwangi*, a deposit account is  
27 merely an account payable of a bank to the depositor. There are no  
28 specific coins, bills, or certificates which a bank holds for the

1 customer.

2 In fact, however, it [bank account] consists of nothing  
3 more or less than a promise to pay, from the bank to the  
4 depositor, see *Bank of Marin v. England*, 385 U.S. 99,  
5 101, 17 L. Ed. 2d 197, 87 S. Ct. 274 (1966); *Keller v.*  
6 *Frederickstown Sav. Institution*, 193 Md. 292, 296, 66  
A.2d 924, 925 (1949); and petitioner's temporary refusal  
to pay was neither a taking of possession of respondent's  
property nor an exercising of control over it, but merely  
a refusal to perform its promise.

7 *Citizens Bank of Maryland v. Strumpf*, 516 U.S. 16, at 20, 21  
8 (1995).

9 This is consistent with California law. See 4 *Witkin Summary*  
10 *of California Law*, Negotiable Instruments, Banking, §75. A bank is  
11 an account debtor to its customers for general deposits made at the  
12 bank. *Fidelity Savings & Loan Association v. Rodgers*, 180 Cal.  
13 683, (1919), and *Holbrook v. Smith*, 87 Cal.App.2d 66, 73 (1994) -  
14 a general deposit creates a debtor-creditor relationship between  
15 the debtor and the customer. "A deposit is always deemed to be  
16 general unless made special by agreement and something more than  
17 the intent of one party to the deposit is necessary - the intent of  
18 both parties must be shown to concur." *Bank of America National*  
19 *Trust & Savings Assn. v. Board of Supervisors*, 93 Cal. App.2d 75,  
20 80. No contention has been advanced by the Debtors that the  
21 accounts at issue are anything other than general deposit accounts.

22 The exemptions claimed by the Debtors in this case were made  
23 pursuant to California law in the amount of \$2,517.54. California  
24 exemptions, including the one at issue in this adversary  
25 proceeding, generally are for specific dollar amounts and do not  
26 cause the entire asset to be excluded from the bankruptcy estate.  
27 The United States Supreme Court recently addressed this issue,  
28 concluding that a debtor's dollar amount exemption does not remove

1 the asset from the bankruptcy estate. *Schwab v. Reilly*, \_\_U.S. \_\_,  
2 130 S. Ct. 2652, 2668-2669 (2010).

3 The Ninth Circuit Court of Appeals addressed this exemption  
4 issue concerning property in which the debtor claims an exemption  
5 continuing to be property of the estate in *Gebhart v. Gaughan* and  
6 *Chappell v. Klein*, 621 F.3d 1206 (9th Cir. 2010).<sup>4</sup> For the *Gebhart*  
7 cases, the properties had values as of the commencement of those  
8 cases less than the liens and homestead exemptions claimed by the  
9 respective debtors. Each Chapter 7 debtor argued that exempting  
10 the property removed it from the bankruptcy estate, and therefore  
11 the postpetition appreciation in value inured to the benefit of  
12 each respective debtor. The Ninth Circuit expressly rejected the  
13 contention that a monetary exemption removed the assets from the  
14 bankruptcy estate. See *Gebhart*, 621 F.3d at 1210. Bankruptcy  
15 debtors are entitled to the monetary amount claimed as exempt when  
16 the Chapter 7 trustee liquidates the asset and distributes the  
17 proceeds from the disposition of the asset, not the asset itself.  
18 The Estate is entitled to any additional value in the property of  
19 the estate, including postpetition appreciation.

20 In the present case the Debtors have asserted a monetary  
21 exemption of \$2,517.54 in the to WFB accounts. The Debtors are  
22 entitled to and will receive the monetary value of their exemption  
23 when the WFB accounts are administered as property of the estate by  
24 the trustee. Claiming an exemption in the WFB accounts does not  
25 remove them from this bankruptcy estate.

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28 <sup>4</sup> The Ninth Circuit ruling in *Gebhart* was subsequent to the  
Bankruptcy Appellate Panel ruling in *Mwangi*.

1                   **THE CHAPTER 7 TRUSTEE HAS THE RIGHT**  
2                   **TO POSSESSION AND CONTROL OF THE WFB ACCOUNTS**

3           Upon the commencement of the bankruptcy case, it is the  
4 Chapter 7 trustee who holds all of the rights and responsibility  
5 for property of the Estate. The Trustee is the sole representative  
6 of the bankruptcy estate. 11 U.S.C. § 323(a). As the  
7 representative of the estate, the Chapter 7 trustee's duties  
8 include collecting and reducing to money the property of the  
9 estate. 11 U.S.C. § 704(a)(1). It is the Chapter 7 trustee who  
10 disposes of property of the estate in which another person has an  
11 interest which is not otherwise disposed of under the Bankruptcy  
12 Code. 11 U.S.C. § 725. No provision is made for the Chapter 7  
13 debtor to co-administer property of the estate, and no order has  
14 been entered in this case authorizing the Debtors to administer  
15 these assets in lieu of the Chapter 7 Trustee.<sup>5</sup> Property ceases  
16 being property of the estate when (1) it has been used or sold by  
17 a trustee pursuant 11 U.S.C. § 363, (2) disbursed pursuant to  
18 11 U.S.C. § 725 or § 726, (3) abandoned pursuant to 11 U.S.C. §554,  
19 or (4) the automatic stay is terminated to allow a lien creditor or  
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21           <sup>5</sup> There can be no serious contention that the Debtors can  
22 control, assert, or co-opt rights of the Estate relating to  
23 alleged violations of the automatic stay. *Estate of Thelma V.*  
24 *Spirto v. One San Bernardino County Superior Court Case Numbered*  
25 *SPR 02211, et al.*, 443 F.3d 1172, 1176 (9th Cir. 2006), "We  
26 therefore reaffirm our previous reasoning of our sister circuits  
27 and hold that the Bankruptcy Code endows the bankruptcy trustee  
28 with the exclusive right to sue on behalf of the estate." See  
also *In re Stanley H. Calvin and Barbara A. Calvin*, 329 B.R. 589,  
602 (Bankr. S.D. Tx 2005), the trustee is the only party with  
standing to assert a claim for a violation under 11 U.S.C.  
§ 362(a)(3) for a bank account which is property of the  
bankruptcy estate; and *In re Robert Laux*, 181 B.R. 60, 61 (Bankr.  
SD Ill 1995).

1 other person having an interest in the property exercise rights  
2 which terminate the interests of the estate.

3 Further, Congress provides express direction to a bank (as the  
4 obligor on an account payable) to pay the obligation owing to the  
5 estate to the trustee when it comes due. 11 U.S.C. § 542(b). It  
6 is for the Chapter 7 trustee to determine when and how to make  
7 demand for payment of the obligation from the bank, not these  
8 Chapter 7 Debtors.<sup>6</sup> There are many reasons a Chapter 7 trustee may  
9 not demand the immediate closing of the account or payment of the  
10 obligation owed to the estate. The most obvious is that a Trustee  
11 may be pleased with the interest rate the estate is receiving on  
12 the obligation. Additionally, a premature demand for payment may  
13 result in the estate incurring a penalty or fee that diminishes the  
14 asset for the estate. A third situation could be one in which the  
15 immediate payment of the monies creates otherwise avoidable  
16 administrative problems for the trustee.

17 The Debtors are incorrect in their contention that by claiming  
18 an exemption in the prepetition accounts they have removed the  
19 accounts from the bankruptcy estate. Further, they have failed to  
20 show any basis for the Chapter 7 Debtors having any right to  
21 control or possess property of the estate. The two WFB accounts  
22 are property of the estate and under the control of only the  
23 Chapter 7 Trustee.

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27  
28 <sup>6</sup> No allegation has been made that the Chapter 7 Trustee has  
made any demand for payment of the monies due the Estate or that  
the obligation to pay any monies had come due.

1                   **THE DEBTORS DO NOT HAVE STANDING TO**  
2                   **ALLEGE VIOLATIONS OF THE AUTOMATIC STAY**  
3                   **RELATING TO PROPERTY OF THE ESTATE**

4           In the present adversary proceeding the Debtors are not  
5 attempting to assert any violation of the automatic stay as to the  
6 Debtors or property of the Debtors. Instead, they are asserting  
7 that the automatic stay has been violated as it applies to property  
8 of the bankruptcy estate, alleging only a violation of 11 U.S.C.  
9 § 362(a)(3). A basic tenets of federal court jurisdiction is the  
10 plaintiff must assert his or her own rights. One is not allowed to  
11 proceed with theoretical arguments or purport to advance rights of  
12 other persons. "To qualify as a party with standing to litigate,  
13 a person must show, first and foremost, 'an invasion of a legally  
14 protected interest' that is 'concrete and particularized' and  
15 'actual or imminent.'" *Arizonans for Official English v. Arizona*  
16 520 U.S. 43, 64, 117 S.Ct. 1055 (1997).

17           When Congress enacted the 11 U.S.C. § 362(a) automatic stay  
18 provisions, it created two specific areas for the stay - one for  
19 the estate and one for the debtor. For the debtor, the provisions  
20 of 11 U.S.C. § 362(a) stay the following:

21           (1) The commencement or continuation of an action, proceeding  
22 or process against the debtor, or to recover a claim, which was or  
23 could have been commenced or arose prior to the commencement of the  
24 bankruptcy case. 11 U.S.C. § 362(a)(1).

25           (2) The enforcement of a judgment obtained before the filing  
26 of the bankruptcy case against property of the debtor or the  
27 bankruptcy estate. 11 U.S.C. § 362(a)(2).

28           (3) The creation, perfection, or enforcement of a lien against  
property of the debtor that secures a claim that arose before the

1 commencement of the bankruptcy case. 11 U.S.C. § 362(a)(5).

2 (4) Any act to collect, assess or recover a claim against the  
3 debtor that arose before the commencement of the bankruptcy case.

4 11 U.S.C. § 362(a)(6).

5 (5) Any setoff of a debt owing to a debtor that arose before  
6 the commencement of the bankruptcy case against any claim against  
7 the debtor. 11 U.S.C. § 362(a)(7).

8 The Debtors have not alleged in the Complaint or in opposing  
9 this Motion any violations of these provisions that apply to a  
10 debtor. The only assertion is that WFB violated 11 U.S.C.  
11 § 362(a)(3), which stays acts to obtain possession of or control of  
12 property of the Estate.

13 The Debtors argue that since an individual is given a remedy  
14 under 11 U.S.C. § 362(k) for violations of the automatic stay,  
15 these Debtors should have the right to recover personal claims and  
16 damages from WFB for its refusal to disburse property of the  
17 bankruptcy estate directly to the Debtors. While a debtor may seek  
18 recovery of damages when the automatic stay is violated as to that  
19 debtor, such a remedy does not grant the debtor "co-trustee" like  
20 powers to control property of the estate. The Debtors may not  
21 assert rights of the bankruptcy estate against third-parties, such  
22 as the alleged claim for violating the automatic stay as it applies  
23 to property of the estate. The Debtors do not have standing to  
24 assert the violation of the automatic stay alleged in the  
25 Complaint.

26 **THE DEBTORS HAVE IGNORED ENFORCING**  
27 **THEIR ACTUAL RIGHTS TO OBTAIN EXEMPT MONIES**  
28 **FROM THE BANKRUPTCY ESTATE**

28 This court is also not persuaded by the Debtors' arguments

1 that a debtor is not required to act reasonably in a bankruptcy  
2 case to properly assert his or her rights. These Debtors contend  
3 that WFB (and all other banks, savings banks, savings and loans,  
4 credit unions, and other depository institutions) is required to  
5 pay any and all monies relating to bank accounts when demanded by  
6 a debtor. The only alternative posited by the Debtors is for the  
7 financial institution to seek declaratory or injunctive relief from  
8 the bankruptcy court.

9 If one accepts the argument that a bank must commence an  
10 action in every Chapter 7 case for an order directing a trustee to  
11 act on the property of the Estate or for declaratory relief when  
12 faced with a claim of exemption, the courts would be deluged with  
13 adversary proceedings.<sup>7</sup> Using the data from just the Eastern  
14 District of California for the period January 2010 - December 2010,  
15 there were 43,967 Chapter 7 cases filed. If one assumes that the  
16 debtors had bank accounts in only 80% of the cases, this would  
17 result in 35,173 additional adversary proceedings filed annually by  
18 financial institutions in just the Eastern District of California.

19 The Bankruptcy Code has not been structured to foment  
20 litigation, but to provide for the proper and efficient  
21 administration of the estate and the respective rights of all  
22 parties. To accept the Debtor's interpretation of the Bankruptcy  
23 Code requires this court to presume that Congress sought to mandate  
24 a multiplicity of lawsuits and override the Constitutional  
25 requirement of standing.

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26  
27  
28 <sup>7</sup> Rule 7001, Federal Rules of Bankruptcy Procedure require  
that injunctive relief, declaratory relief, or an interpleader be  
commenced as an adversary proceeding.



1 Under the oversight of the Office of the United States  
2 Trustee, the Chapter 7 trustee has the responsibility to properly  
3 administer and distribute property of the estate to the debtor and  
4 other parties entitled to receive such property. This includes  
5 abandoning property which is of inconsequential value or burdensome  
6 to the estate. 11 U.S.C. § 544(a). A debtor claiming an exemption  
7 in property of the estate may contact the trustee to obtain a  
8 distribution of that portion of such property of the estate which  
9 is properly exempt.

10 If the Chapter 7 trustee refuses or fails to properly  
11 distribute or abandon exempt property of the bankruptcy estate, the  
12 remedy under the Bankruptcy Code for the debtor is to obtain an  
13 order for abandonment pursuant to 11 U.S.C. § 554(b). The Debtors  
14 in this case failed to seek the expedient distribution of the  
15 exemption portion of the WFB accounts, instead electing to commence  
16 this Adversary Proceeding.<sup>8</sup>

17  
18 **THE COMPLAINT FAILS TO STATE  
ANY CLAIMS AGAINST THE DEFENDANT**

19 The court has considered all of the alleged facts and legal  
20 claims asserted by the Debtors in ruling on this Motion to Dismiss  
21 for Failure to State a Claim. Even giving the Debtors the benefit  
22 of assuming at this early stage of the adversary proceeding that  
23 all allegations are true, this court concludes that the automatic  
24 stay was not violated as to the Debtors and that the Debtors have  
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26  
27 <sup>8</sup> In the Eastern District of California a debtor can have a  
28 motion to abandon heard on 14 days notice. This presupposes that  
the trustee is unable or unwilling to fulfill his or her  
obligation to administer property of the estate and voluntarily  
abandon property of the estate to the debtor.

1 not stated any plausible claims for relief against WFB under the  
2 Bankruptcy Code or state law. The Debtors cannot assert any of the  
3 alleged monetary or equitable claims against WFB for refusing to  
4 comply with the Debtors' directions to deliver property of the  
5 estate directly to the Debtors.<sup>9</sup>

6 The court grants the Wells Fargo Bank, N.A. Motion to Dismiss  
7 for Failure to State a Claim on each of the causes of action  
8 alleged in the Complaint. The Plaintiff is granted leave to file  
9 an amended complaint within 20 days of the entry of the order  
10 granting this motion. If the Debtors fail to timely file an  
11 amended complaint, the court shall dismiss this adversary  
12 proceeding without prejudice and without further notice.

13 The court shall issue an order granting the Motion to Dismiss  
14 with leave for the Debtors to amend the complaint. This Memorandum  
15 Opinion and Decision constitutes the findings of fact and  
16 conclusions of law pursuant to Rule 52, Federal Rules of Civil  
17 Procedure, and Rules 9014 and 7052, Federal Rules of Bankruptcy  
18 Procedure.

19 Dated: February 7, 2011

20 /s/ Ronald H. Sargis  
21 RONALD H. SARGIS, Judge  
22 United States Bankruptcy Court  
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26 <sup>9</sup> It may well be in this case that it is actually these  
27 Debtors who have engaged in an "act to obtain possession of  
28 property of the estate or...to exercise control over property of  
the estate." That issue has not been presented to the court by  
the Chapter 7 trustee who is in control of the rights of the  
bankruptcy estate.