UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

October 20, 2015 at 1:30 p.m.

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1. 10-24808-E-13 AMY HUYNH — **MOTION FOR RELIEF FROM AUTOMATIC STAY**
DJD-1 Alan Steven Wolf — **10-4-15 [109]**

SETERUS, INC. VS.

Tentative Ruling: The Motion for Relief From the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on October 4, 2015. By the court's calculation, 16 days' notice was provided. 14 days' notice is required.

The Motion for Relief From the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing ----------.

The Motion for Relief From the Automatic Stay is denied without prejudice.

Seterus, Inc., as the authorized subservicer for Federal National Mortgage Association, c/o Seterus, Inc. ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 3508 Maddiewood Circle, Sacramento, California (the "Property").

Movant has provided the Declaration of a Seterus, Inc. Bankruptcy Specialist to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. However, there is no printed name of the individual allegedly authenticating the information and the signature is illegible.

The Declaration provided appears to be a "fungible testimony" document which is prepared in blank and then a scrawl for a signature placed on it. If the court were to accept this on face value, the attorney preparing the declaration has no idea who the declarant is, and no declarant is willing to provide the testimony under penalty of perjury. How an attorney could prepare a declaration providing "personal knowledge testimony" and not sufficiently know the identity of the person so "testifying" so as to have that name typed at the start of the declaration and at the signature block is a mystery to the court.

The court cannot and will not grant Motions when the basis of the Motion is in a declaration where the declarant's name is nowhere in the declaration. It appears that the Movant is hoping that the mere act of filing a declaration to authenticate information is sufficient. It is not. The point of a declaration is for an individual to state under the penalty of perjury their personal knowledge on matters. The declaration filed by the Movant merely states facts that, unauthenticated, is merely hearsay.

Because the Movant has failed to provide a declaration in which an actual declarant can be identified, the Motion is denied without prejudice. FN.1.

FN.1. It is unfortunate that this Motion fails for such a fundamental basis. The court notes that Movant and counsel have provided a declaration which clearly identifies Seterus, Inc. as the agent and Fannie Mae as the creditor. Clearly both have understood the court's concerns with respect to the exercise of federal judicial power when the real parties are not correctly identified (such as a loan service misrepresenting it is the creditor. U.S. Const. Art III, Sec. 2. But the court's acknowledgment of this proper conduct cannot offset testimony being presented by unidentified persons.

The court shall issue an order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief From the Automatic Stay filed by Seterus, Inc., as the authorized subservicer for Federal National Mortgage Association, c/o Seterus, Inc. ("Movant") having been

presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

2. 15-26710-E-13 ROBERTO RAMIREZ
Pro Se

STATUS CONFERENCE RE: CHAPTER 13 VOLUNTARY PETITION
8-25-15 [1]

The court issued an Order setting a Status Conference in this Chapter 13 case. The precipitating event for this Status Conference Order was the filing of a motion by Roberto Ramirez, the Debtor, to extend the automatic stay and motion to vacate the dismissal of the Chapter 13 case. Dckts. 33 and 28. The court denied a prior motion to extend the automatic stay, issuing a detailed Memorandum Opinion and Decision. Dckt. 12.

The court denied the motion to extend the automatic stay. The thirty-day period from the date of commencement of the case having expired, the stay has terminated, and cannot be extended, as to the Debtor. Order, Dckt. 39. The court also addresses in the motion to extend the automatic stay deficiencies with the evidence presented by the pro se Debtor.

The Status Conference Order requires that Debtor appear at the Status Conference. No pleadings or status reports were required to be filed by the Debtor. If Debtor failed to appear, the Order states that the case will be dismissed for failure to comply with an order of the court, and expressly notifies the Debtor of the 180-day bar on commencing another case as provided in 11 U.S.C. § 109(g).

The court ordered the Status Conference and appearance of Debtor because this is not the Debtor's second recent bankruptcy case. It is his fourth case since April 2, 2014. The cases, and their dispositions are summarized as follows:

Current Chapter 13 Case 15-26710	Filed: August 25, 2015 Dismissed: September 14, 2015 Dismissal Vacated: September 23, 2015	

	A. Case dismissed for Debtor's failure to timely file Schedules, Statement of Financial Affairs, and Plan. B. Schedules list only one creditor, Nationstar Mortgage. (Debtor received a discharge in Case 14-25966.)	
Chapter 13 Case 14-31766 Attorney: *In Pro Se*	Filed: December 2, 2014 Dismissed: June 29, 2015	
	Dismissal: The court dismissed the case due to (1) Debtor being in default in plan payment and (2) Debtor failing to file an amended plan and motion to confirm after denial of confirmation of the prior proposed plan. 14-31766; Civil Minutes, Dckt. 42. Denial of Confirmation: The court denied confirmation of the prior proposed plan for grounds including: (1) Debtor's failure to attend First Meeting of Creditors, (2) failure to complete the basic Chapter 13 documents, (3) the prior proposed Chapter 13 Plan not being completed, (4) failure to disclose the multiple prior bankruptcy cases filed by Debtor, and (5) failure to provide divided for general unsecured claims which met the Chapter 7 liquidation requirement. *Id.*; Civil Minutes, Dckt. 32.	
Chapter 7 Case 14-25966 Attorney: *In Pro Se*	Filed: June 4, 2014 Discharge: October 24, 2014 Case Closed: October 31, 2014	
	Order Granting Relief From Stay: Nationstar Mortgage, LLC granted relief from automatic stay to exercise rights to foreclose on real property commonly known as 2440 Beaufort Drive, Fairfield, California. 14-25966; Order, Dckt. 29.	
Chapter 7 Case 14-23403 Attorney: *In Pro Se*	Filed: April 2, 2014 Dismissed: May 1, 2014	
	Dismissal: The bankruptcy case was dismissed due to Debtor's failure to file the basic Chapter 7 documents necessary to prosecute the case. 14-23403; Order, Dckt. 27. Denial of Motion to Vacate Dismissal: The court denied a request to vacate the dismissal. *Id.*; Order, Dckt. 31.	

Chapter 13 Case 11-48165 Attorney: Peter G. Macaluso	Filed: December 2, 2011 Dismissed: July 9, 2013	
	Dismissal: The bankruptcy case was dismissed after eighteen months due to Debtor's failure to cure defaults in the plan payments or file a modified plan and motion to confirm to address the defaults. 11-48165; Order, Dckt. 41. The Notice stated the default to be $4,440.00, with the monthly plan payments being $1,480.00. *Id.*; Notice, Dckt. 38.	

The Chapter 13 Plan filed in this case provides for $150.00 payments for an unstated number of months. Dckt. 23. For the Class 1 Claims, Debtor lists Nationstar Mortgage as having a secured claim with a $31,555.00 arrearage. The monthly contract installment amount is stated to be $600.00, which is in and of itself four times the monthly play payment to be made by Debtor. *Id.* No other claims are provided for in the Plan. (Debtor having obtained a discharge, the absence of claims is not shocking.)

Response of Chapter 13 Trustee

The Chapter 13 Trustee filed a Response on October 6, 2015. Dckt. 51. The Trustee reports that the Debtor has failed to make any payments for the Plan. Further, Debtor has not provided tax returns. This is supported by declaration testimony. Dckt. 52.

Third Motion to Extend Stay

On October 1, 2015, Debtor filed a third motion to "impose" the automatic stay. Dckt. 44. The title of the motion states that relief is sought pursuant to 11 U.S.C. § 362(c)(3)(B)(4). No such Bankruptcy Code section exists. It appears that this reference may be a "mash-up" of 11 U.S.C. § 362(c)(3) and 11 U.S.C. § 362(c)(4).

In the Motion Debtor states that he has an ability to fund a plan, and requests that the court "impose" the automatic stay in this case. As the court addressed in its prior rulings, Congress has caused the automatic stay in this case to terminate, as to the Debtor, thirty-days after the commencement of this case. 11 U.S.C. § 362(c)(3)(A). Only if the court enters an order extending the stay within thirty-days of the filing will the automatic stay continue in effect as to the Debtor. 11 U.S.C. § 362(c)(3)(B). No provision is made for the court to "impose" a stay once it has been terminated pursuant to 11 U.S.C. § 362(c)(3)(A).

The Trustee has filed a Response to the Debtor's third motion, noting that the thirty days provided for in 11 U.S.C. § 362(c)(3)(B) have expired. Dckt. 54.

Feasibility of Bankruptcy Case

The automatic stay has terminated as to the Debtor. However,

Congress has not provided for the automatic stay to terminate as to the estate and property of the bankruptcy estate. At the Status Conference the court sought to address the viability of this bankruptcy case (in light of the prior filings and dismissals).

The basic economics of the case, as presented by Debtor, are as follows:

A. Gross Income (Sch. I, Dckt. 17).....$3,782

B. Expenses (Schedule J, *Id.*).....($2,895)

For the Expenses, Debtor lists a family of four, consisting of Debtor, spouse, and two minor children. The court has some concerns as to the credibility of the expenses, including the following:

A. Clothing, Laundry.....$50.00

B. Personal Care Products.....$ 0.00

C. Medical and Dental Expenses.....$ 0.00

D. Health Insurance.....$ 0.00

E. Taxes.....$ 0.00

In bankruptcy case No. 14-31766, Nationstar Mortgage, LLC filed a proof of claim on April 13, 2015. The claim is in the amount of $227,303.78, with an arrearage, as of April 13, 2015, of $32,631.43. 14-31766, Proof of Claim No. 2. For a Chapter 13 Plan, repayment of $32,631.43 over a term of sixty months would be $543.86 a month. (The arrearage is likely higher given that the arrearage amount if for an April 2015 proof of claim.)

October 20, 2015 Status Conference

At the October 20, 2015 Status Conference, xxxxxxxxxxxxxxxxx.

3. 15-26935-E-13 GINA LAFRANCHI
EAT-1 Pro Se

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-15-15 [11]

DEBTOR DISMISSED: 9/2/15
HSBC BANK USA, N.A. VS.

Final Ruling: No appearance at the October 20, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Pamela Pena, Chapter 13 Trustee, and Office of the U.S. Trustee on September 15, 2015. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief From the Automatic Stay is granted.

HSBC Bank USA, National Association as Trustee for MortgageIT Securities Corp. Mortgage Loan Trust, Series 2007-1, Mortgage Pass-Through Certificates ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 5644 Bluffs Dr., Rocklin, California (the "Property"). The moving party has provided the Declaration of Edward Treder to introduce evidence as a basis for Movant's contention that Gina Lafranchi ("Debtor") do not have an ownership interest in or a right to maintain possession of the Property. Movant presents evidence that it is the owner of the Property. Movant asserts it purchased the Property at a pre-petition Trustee's Sale on October 17, 2014. Based on the evidence presented, Debtor would be at best tenant at sufferance. Movant commenced an unlawful detainer action in California Superior Court, County of Placer County. Exhibit 3, Dckt. 14.

Movant has provided a properly authenticated copy of the recorded

Trustee's Deed Upon Sale to substantiate its claim of ownership.

David Cusick, the Chapter 13 Trustee, filed a non-opposition to the instant Motion on October 5, 2015.

BACKGROUND

Debtor filed the instant bankruptcy case on September 1, 2015. The Movant filed the instant Motion on September 15, 2015. Dckt. 11. The court issued an order dismissing the case for failure to timely file documents on September 21, 2015. Dckt. 20.

However, the case remains open at this time.

DISCUSSION

While the Movant asserts various arguments and grounds, the applicable Bankruptcy Code provision for the matter before the court is 11 U.S.C. § 362(c)(1) and (2). This section provides:

In relevant part, 11 U.S.C. § 362(c) provides:

> (c) Except as provided in subsections (d), (e), (f), and (h) of this section--
>
> > (1) the stay of an act against property of the estate under subsection (a) of this section continues until such **property is no longer property of the estate**;
> >
> > (2) the stay of any other act under subsection (a) of this section continues until the earliest of--
> >
> > > ***(A) the time the case is closed;***
> > >
> > > (B) the time the case is dismissed; or
> > >
> > > (C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied;

11 U.S.C. § 362(c) (emphasis added).

Pursuant to 11 U.S.C. § 554(c), "any property scheduled under section 521(a)(1) of this title not otherwise administered at the time of the closing of a case is abandoned to the debtor and administered for purposes of section 350 of this title."

First, just because the case has been dismissed does not mean that the instant Motion should be discharged as moot. As 11 U.S.C. § 362(c) provides, the stay continues until "such property is no longer property of the estate" which happens at the time of closing of the case when it is abandoned back to the Debtor. Here, the case has been dismissed but not yet closed, meaning the Property remains part of the estate.

The dismissal has just been terminated as to "any other act" under 11 U.S.C. § 362(a). Therefore, as to the Debtor, the stay has been terminated as an operation of law from the order dismissing the case on March 20, 2015.

Moving onto the instant Motion as to the Property, based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2).

Movant has presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel in *Hamilton v. Hernandez*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427 (B.A.P. 9th Cir. Aug. 1, 2005), relief from stay proceedings are summary proceedings which address issues arising only under 11 U.S.C. Section 362(d). *Hamilton*, 2005 Bankr. LEXIS 3427 at *8-*9 (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief as part of a motion for relief from the automatic stay Contested Matter (Fed. R. Bankr. P. 9014).

The Movant also seeks relief under 11 U.S.C. § 326(d)(4). 11 U.S.C. § 362(d)(4) allows the court to grant relief from stay where the court finds that the petition was filed as part of a scheme to delay, hinder or defraud creditors that involved either (I) transfer of all or part ownership or interest in the property without consent of secured creditors or court approval or (ii) multiple bankruptcy cases affecting the property. 3 Collier on Bankruptcy ¶ 362.07 (Alan N. Resnick & Henry J. Sommer eds. 16th ed.).

However, the Motion does not argue any facts or grounds for such relief. The Motion does state that there was a bankruptcy case filed by Pamela Pena on June 8, 2015 (Case No. 15-24610) where the Movant had to file a Motion for Relief from the Automatic Stay as to the instant Property. However, the Movant does not actually argue any grounds under 11 U.S.C. § 362(d)(4) that would justify such relief. The court will not presume a scheme when the Movant does not provide argument to such. Therefore, the request for relief pursuant to § 362(d)(4) is denied.

The court shall issue a minute order terminating and vacating the automatic stay to allow HSBC Bank USA, National Association as Trustee for MortgageIT Securities Corp. Mortgage Loan Trust, Series 2007-1, Mortgage Pass-Through Certificates, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 5644 Bluffs Dr., Rocklin, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

The Movant has alleged adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3).

No other or additional relief is granted by the court.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by HSBC Bank USA, National Association as Trustee for MortgageIT Securities Corp. Mortgage Loan Trust, Series 2007-1, Mortgage Pass-Through Certificates ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow HSBC Bank USA, National Association as Trustee for MortgageIT Securities Corp. Mortgage Loan Trust, Series 2007-1, Mortgage Pass-Through Certificates and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 5644 Bluffs Dr., Rocklin, California.

IT IS FURTHER ORDERED that to the extent the Motion seeks relief from the automatic stay as to David Sears ("Debtor"), the discharge having been entered in case, the Motion is denied as moot pursuant to 11 U.S.C. § 362(c)(2)(C).

IT IS FURTHER ORDERED that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is waived for cause shown by Movant.

No other or additional relief is granted.

4. 11-48095-E-13 MICHAEL NEUMANN
RHS-1

ORDER TO APPEAR AND SHOW CAUSE FOR FILING NOTICE OF ASSIGNMENT OF CLAIM
9-14-15 [92]

Tentative Ruling: The Order to Appear and Show Cause for Filing Notice of Assignment of Claim was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(3) Motion.

Correct Notice Provided. The Proof of Service states that the Order and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties in interest, and Office of the United States Trustee on September 16, 2015. By the court's calculation, 36 days' notice was provided.

The Order to Appear and Show Cause for Filing Notice of Assignment of Claim was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing ----------.

The Order to Appear and Show Cause for Filing Notice of Assignment of Claim is ----------.

In this bankruptcy case the court determined it was necessary and appropriate to issue an Order to Appear and Show Cause for various parties and their attorneys concerning representations made in pleadings and under penalty of perjury in declarations by attorneys for the parties.

BACKGROUND

On December 1, 2011, Michael M. Neumann ("Debtor") commenced this Chapter 13 case. Debtor's Chapter 13 Plan was confirmed on March 13, 2012. Order, Dckt. 52. The Plan provides for paying the secured claim of GMAC Mortgage, LLC as a Class 1 claim, curing the pre-petition arrearage, and making the current post-petition payment through the Chapter 13 Plan. Plan, ¶ 3.09; Dckt. 20.

As addressed in this Order to Appear and Show Cause, the identity of the creditor has varied, with one law firm appearing on behalf of various entities which purport to be the creditor. Conflicting information has been provided under penalty of perjury by the attorneys concerning the identity of the creditor. Further, the loan servicer which at times has purported to be the creditor, has misrepresented itself as the "creditor" in other unrelated bankruptcy cases. In light of the misrepresentations in prior cases and the conflicting statements under penalty of perjury by counsel, the court finds it necessary and proper to issue this Order.

Representation and Conduct in This Bankruptcy Case

GMAC Mortgage, LLC filed a proof of claim on February 8, 2012. Proof of Claim No. 1. The GMAC Mortgage, LLC proof of claim is signed by Evan Daily. Mr. Daily states that he, an attorney with the Pite Duncan, LLP law firm, is executing Proof of Claim No. 1 as the agent of GMAC Mortgage, LLC.

On April 9, 2012, GMAC Mortgage, LLC filed a Notice of Post-Petition Mortgage Fees, Expenses and Charges. April 9, 2012 Docket Entry (after Dckt. Entry 52 and also on the Clerk's Registry of Claims in this case for Proof of Claim No. 1). That Notice is signed by Evan M. Daily (SBN 258513), as an attorney with the Pite Duncan, LLP law firm. The Notice states that post-petition fees in the amount of $30.00 for a bankruptcy recording fee and $425.00 for bankruptcy attorneys' fees relating to the proof of claim are owed by Debtor in addition to the amounts stated on Proof of Claim No. 1.

On February 28, 2013, a Notice of Mortgage Payment Change was filed by Ocwen Loan Servicing, LLC for the GMAC Mortgage, LLC claim. February 28, 2013 Docket Entry (after Dckt. Entry 61 and also on the Clerk's Registry of Claims in this case for Proof of Claim No. 1). On the Notice in the "Name of Creditor" field, the following information is provided: "Ocwen Loan Servicing, LLC*." The asterisk is tied to the following footnote on page 2 of the Notice:

> * Please note, effective February 16, 2013, Ocwen Loan Servicing, LLC, acquired the servicing rights for the above-referenced loan from GMAC Mortgage, LLC. As of the date of this notice the address where payments should be sent has not changed.

This statement of providing loan servicer functions for the actual creditor is consistent with the information provided by Ocwen Loan Servicing, LLC and its various creditor clients who have appeared in other unrelated cases.

The Notice of Mortgage Payment Change is signed by Megan E. Lees (SBN 277805), of the Pite Duncan, LLP law firm. Ms. Lees failed to identify in Part 4 of this Notice whether she was signing as the creditor or the authorized agent of the creditor. Ms. Lees does state under penalty of perjury that Ocwen Loan Servicing, LLC is acting as the loan servicer for the actual creditor, and correspondingly, states that Ocwen Loan Servicing, LLC is not the creditor.

Appearance of Ocwen Loan Servicing, LLC as a Creditor and Conflicting Testimony Under Penalty of Perjury By Attorneys From Pite Duncan, LLP

On April 16, 2013, Pite Duncan, LLP, filed a Notice of Transfer of Claim No. 1, executing the document as the attorney for Ocwen Loan Servicing, LLC. Dckt. 62. That Notice states that Proof of Claim No. 1 was transferred from GMAC Mortgage, LLC to Ocwen Loan Servicing, LLC. On this Notice is the image of a digital signature of Philip J. Giles, followed by the description, "Attorneys for Ocwen Loan Servicing, LLC." Mr. Giles is identified as an attorney with the Pite Duncan, LLP law firm.

Attached to the Notice of the purported assignment of the claim are several documents in support of the purported assignment. The first is a copy of a promissory note with an endorsement in blank on it. The second is titled "GMAC MORTGAGE, LLC, CERTIFICATE OF ASSISTANT SECRETARY." This document purports to be signed by Jennifer Shank, Assistant Secretary, and is dated March 8, 2013. The signature of Ms. Shank is stranded by itself with no other information on page 3 of the Certificate.

In this Certificate, Ms. Shank, as the Assistant Secretary of GMAC Mortgage, LLC, makes the following statements and representations:

A. GMAC Mortgage, LLC sold certain mortgage loans and mortgage loan servicing rights to Ocwen Loan Servicing, LLC pursuant to an asset purchase agreement dated November 2, 2012.

B. GMAC Mortgage, LLC entered into Servicing and Subservicing Agreements with Ocwen Loan Servicing, LLC.

C. GMAC Mortgage, LLC will designate certain officers of Ocwen Loan Servicing, LLC to execute documents to implement the Asset Purchase and Servicing Agreements.

D. GMAC Mortgage, LLC authorizes the specified Ocwen Loan Servicing, LLC officer to take actions to document Ocwen Loan Servicing, LLC's interest in the loans.

No documents relating to the transfer of the loan upon which the GMAC Mortgage, LLC claim is based in this case are provided.

On February 18, 2014, Ocwen Loan Servicing, LLC, identified as the creditor, filed a Notice of Mortgage Payment Change, which states that the payment on the debt upon which Proof of Claim No. 1 is based has decreased to $910.78 a month. February 18, 2014 Docket Entry (after Dckt. Entry 70 and also on the Clerk's Registry of Claims in this case for Proof of Claim No. 1). This is stated to be based on projected property taxes and fire fee.

This Notice is signed by Jonathan C. Cahill (SBN 287260), an attorney with the Pite Duncan, LLP law firm.

On April 24, 2015, Ocwen Loan Servicing, LLC, identified as the creditor, filed another Notice of Mortgage Payment Change stating that the monthly payment on the debt upon which Proof of Claim No. 1 is based has increased to $1,214.25 (a 37% increase). April 24, 2015 Docket Entry (after Dckt. Entry 74 and also on the Clerk's Registry of Claims in this case for Proof of Claim No. 1). The Notice states that the increase is $273.55 a month to make up an escrow shortage. The escrow impound as computed by Ocwen Loan Servicing, LLC almost doubles from $295.76 to $569.31. The accounting (escrow analysis) attached to the Notice states that there were no escrow payments in June, July, and December 2014, and February 2015.

The accounting also states that two property tax payments in the amount of $1,405.09 each (which were higher than the amounts used in the 2014 Notice) and a lender placed hazard insurance policy payment in the amount of $739.00 was made by the lender. The April 2015 Notice was signed by Brian H. Tran (SBN not listed), an attorney with the Law Offices of Les Zieve. FN.1.

FN.1. No substitution of attorneys was filed to replace the attorneys at Pite Duncan, LLP as the attorney of record for Ocwen Loan Servicing, LLC in this case.

Objection to Notice of Mortgage Payment Change

On June 30, 2015, Debtor filed an Objection to the Notice of Mortgage Payment Change. Dckt. 75. The grounds for the Objection include:

A. The purported post-petition escrow shortage consists of the pre-petition arrearage that the creditor is being paid through the Chapter 13 Plan.

B. Debtor has cured whatever escrow shortage existed.

C. Debtor has obtained hazard insurance for the property, which will be effective July 1, 2015.

D. The Notice of Mortgage Payment Change by Ocwen Loan Servicing, LLC would result in the creditor being double paid for the pre-petition arrearage.

The Chapter 13 Trustee filed a Response in which he supported the Objection. Dckt. 80. In his Response and supporting Declaration, the Trustee includes the following information:

A. The total mortgage arrears of $20,697.98, which includes the $4,473.52 pre-petition escrow shortage, is being paid through the plan.

B. To date, the Trustee has disbursed $12,435.16 to be applied to the pre-petition mortgage arrearage.

C. To date, the Trustee has disbursed $39,866.52 for post-petition mortgage payments and that such payments are current under the confirmed plan.

The Objection was served on Ocwen Loan Servicing, LLC; Philip Giles of the Pite Duncan, LLP law firm; Brian Tran of the Law Offices of Les Zieve; the U.S. Trustee; and the Chapter 13 Trustee. Ocwen Loan Servicing, LLC failed to respond and no explanation was provided by Ocwen Loan Servicing, LLC or its attorneys (who have been or are also the attorneys of record for GMAC Mortgage, LLC, or Seterus, Inc. in this case relating to the GMAC Mortgage, LLC claim) advocating the correctness of the Notice or addressing any *bona fide* error which may have occurred.

Failure of Ocwen Loan Servicing and It's Attorneys to Respond to Objection to Notice of Mortgage Payment Change

Jonathan Cahill, now an attorney with the Aldridge Pite, LLP law firm (identified as the successor to Pite Duncan, LLP through merger), appeared at the hearing on the objection. However, Aldridge Pite, LLP did not appear as counsel for either Ocwen Loan Servicing, LLP, the client for which it has filed various documents asserting conflicting status in the case, or for GMAC Mortgage, LLC, the client for which it filed the Proof of Claim and Notice stating that Ocwen Loan Servicing, LLC was serving as a loan servicer. Rather, Aldridge Pite, LLP appeared as the attorney for a new entity – Seterus, Inc.

Mr. Cahill, now as counsel for Seterus, Inc., represented to the court that the note upon which the GMAC Mortgage, LLC claim is based, which was purported to have been assigned to Ocwen Loan Servicing, LLC, had now been "transferred" to Seterus, Inc. In other bankruptcy cases, Seterus, Inc. has appeared in this court as a loan servicer for the actual creditor, not as the creditor.

The court asked counsel for Seterus, Inc. whether by stating that the claim had been "transferred" he meant that the loan servicing rights and duties had been transferred and Seterus, Inc. was the agent of the actual creditor, or that Seterus, Inc. had purchased the underlying note and itself was the actual creditor. The Aldridge Pite, LLC attorney for Seterus, Inc. stated that he did not know what, if any, interest Seterus, Inc. had in the note or whether it was working as a loan servicer. The attorney requested that the hearing be continued so that he and Seterus, Inc. could now investigate what interests his client could possibly have in the note or assert for the actual creditor as a loan servicer, as well as investigate what possible responses Seterus, Inc. might want to state to the Objection for which Ocwen Loan Servicing, LLC failed to provide any opposition or appear at the hearing.

The court did not find this contention that some possible, but unknown to counsel, interest which Seterus, Inc. might have obtained or what unidentified servicing rights it may have obtained, to be a credible basis for stating an opposition to the Objection (as required by Local Bankruptcy Rule 9014-1(f)(2)(C)) as grounds to continue the hearing. The court took note that no opposition was asserted by Ocwen Loan Servicing, LLC, the entity whom attorneys at Pite Duncan, LLP (now successor law firm Aldridge Pite, LLP) had identified under penalty of perjury as the "creditor" on

multiple prior occasions, as well as the loan servicer. FN.2.

FN.2. The court's Findings of Fact and Conclusions of Law stated in the Civil Minutes for the August 11, 2015 hearing on the Objection to Mortgage Payment Change, Dckt. 83, include the following on this point,

> Seterus, Inc., with some indeterminate interest or right, possibly, requested that the hearing be continued so it could "investigate" the Notice of Mortgage Payment Change. No explanation was provided why Ocwen Loan Servicing, LLC had not responded to the objection made to the Notice it provided.
>
> Further discussion disclosed that the current counsel for Seterus, Inc. is from the same law firm in which attorneys signed notice of mortgage payment change representing (or apparently affirmatively misrepresenting) that Ocwen Loan Servicing, LLC was the creditor, which it actually was merely the loan servicer for the creditor. This further undercuts the credibility of counsel for Seterus, Inc. representing that Seterus, Inc. has some unidentified, possible interest in, or right to, service the note upon which the claim of GMAC Mortgage, Inc. [sic.] is based in this case.
>
> To the extent that the conduct of Ocwen Loan Servicing, LLC, and its attorneys, have caused there to be some "loss" to GMAC or anyone acquiring an interest in the note, the sustaining of the Objection does not determine the rights of GMAC Mortgage, Inc. [sic.] or any person who may have suffered a loss caused by Ocwen Loan Servicing, LLC or its representatives.

The Objection to the Notice of Mortgage Payment Change was sustained in its entirety on August 13, 2015, and Debtor was awarded $750.00 prevailing party attorneys' fees. Order, Dckt. 84; Civil Minutes, Dckt. 83.

IDENTITY OF CREDITOR

While Ocwen Loan Servicing, LLC's attorneys have filed a document titled "Notice of Assignment," no document purporting to be an assignment of the promissory note upon which the claim is based has been provided to the court. In 2011, the Ninth Circuit Court of Appeals addressed this note-deed of trust issue in *Cervantes v. Countrywide Home Loans, Inc. et. al.*, 656 F.3d 1034 (9th Cir. 2011). The court addressed the general proposition that notes and deeds of trust remain together as a matter of law, with it being the right of the note owner to exercise the power under the deed of trust.

It is well-established law in California that a deed of trust does not have an identity separate and apart from the note it secures. "The note and the mortgage are inseparable; the former as essential, the later as an incident. An assignment of the note carries the mortgage with it, while an

assignment of the latter alone is a nullity." *Carpenter v. Longan*, 83 U.S. 271, 274 (1872); *accord Henley v. Hotaling*, 41 Cal. 22, 28 (1871); *Seidell v. Tuxedo Land Co.*, 216 Cal. 165, 170 (1932); Cal. Civ. Code § 2936.

Conflicting Claim of Ownership and Status of Creditor Filed by GMAC Mortgage, LLC

On July 2, 2015, GMAC Mortgage, LLC filed a pleading stating that it is the creditor is this case. Request for Special Notice, Dckt. 78. *See* 11 U.S.C. § 101(10) and (5) for the statutory definition of "creditor" in bankruptcy cases. This has been corroborated by Ocwen Loan Servicing, LLC in the February 28, 2013 Notice of Mortgage Payment Change in which Ocwen Loan Servicing, LLC affirmatively stated that it was the loan servicer for GMAC Mortgage, LLC. FN.3.

FN.3. The identity of the actual creditor has become murkier. In conducting a final review of the draft of this Order, the court noted that on the docket for this bankruptcy case there is yet another purported transfer of this claim. On August 31, 2015, a "Transfer of Claim Other Than For Security" was filed. Dckt. 89. In the name of transferee box, the following is typed, "Federal National Mortgage Association ('Fannie Mae'), creditor c/o Seterus." The transferor is identified as "Ocwen Loan Servicing, LLC." The claim stated to be transferred is identified as Proof of Claim No. 1.

The form is signed by Lisa Singer, who is identified as the "Transferee/Transferee's Agent," with Rosicki, Rosicki & Associates, P.C., 51 E. Bethpage Rd, Plainview, New York. This signature block conflicts with the earlier identification of the Transferee, as Ms. Signer states that she, or the Rosicki law firm, is either the purported transferee or the agent for the purported transferee. Ms. Singer makes this statement under penalty of perjury. While the Rosicki law firm and Ms. Singer might comment that the court should be able to reconcile this conflict by presuming that having Fannie Mae named as the purported Transferee in the earlier part of the document, the court believes that it is even easier for the person signing the document under penalty of perjury to unequivocally state whether he or she, or the law firm, are doing so as the agent for the transferee or as the transferee itself.

The court has addressed on multiple occasions Ocwen Loan Servicing, LLC misrepresenting that it is the creditor in bankruptcy cases. One recent case was *In re Guitierrez*, Bankr. E.D. Cal. 12-28547. In that case, Ocwen Loan Servicing, LLC presented itself as a creditor which, in its personal capacity, had the rights which it was modifying with the consumer debtors. Ocwen Loan Servicing, LLC was not purporting to modify the rights of any principal or other person with respect to the debt owned by those consumer debtors.

The debtors in *Guitierrez* propounded discovery on Ocwen Loan Servicing, LLC. The motion to approve the debtors in *Guitierrez* entering into a loan modification with Ocwen Loan Servicing, LLC individually, as the creditor (with no designation of acting as the agent or exercising a power of attorney), was filed on January 1, 2015. The court continued the hearing several times to allow those debtors to first informally request, and then propound discovery, for Ocwen Loan Servicing, LLC to identify the actual creditor with whom the *Gutierrez* debtors would be modifying their contract.

The *Gutierrez* debtors reported to the court that, notwithstanding the discovery requests to identify the actual creditor, Ocwen Loan Servicing, LLC failed to respond as required by the Bankruptcy Rule 2004 subpoena. Case No. 12-28547; Status Report filed June 1, 2015, Dckt. 128. This lack of voluntary disclosure of the true identity of the creditor forced the *Gutierrez* debtors to file (and incur the costs and expenses for) a motion to compel discovery and seek compensatory sanctions. *Id.*, Motion, Dckt. 130.

Though Ocwen Loan Servicing, LLC failed to respond to the subpoena and identify the creditor, Deutsche Bank Trust Companies Americas, Trustee, appeared in the *Gutierrez* case and confirmed that it was the creditor and that Ocwen Loan Servicing, LLC was engaged only as the loan servicer for that creditor. *Id.*; Response, Dckt. 124, and Declaration, Dckt. 125. The motion to compel the production of discovery from Ocwen Loan Servicing, LLC was dismissed pursuant to a settlement between Deutsche Bank Trust Companies Americas, Trustee, and the *Gutierrez* debtors. *Id.*; Stipulation, Dckt. 141. The monetary terms of the settlement were not disclosed, other than that Deutsche Bank Trust Companies Americas, Trustee, agreed to pay the debtors' legal fees relating to the failure of Ocwen Loan Servicing, LLC to comply with the Bankruptcy Rule 2004 subpoena.

A similar situation existed in the *Montelongo* bankruptcy case. Bankr. E.D. Cal. 13-23599. The *Montelongo* debtor filed a motion to approve a loan modification between the debtor and Ocwen Loan Servicing, LLC individually, as the creditor, on February 6, 2015. *Id.*; Motion, Dckt. 131. Again, the loan modification documents identified only Ocwen Loan Servicing, LLC personally (with no designation of acting as the agent or exercising a power of attorney) as the only party with whom the debtor was contracting to modify the loan. *Id.*; Exhibit A, Dckt. 134.

The court granted multiple continuances to allow the *Montelongo* debtor to request informally, and then demand through discovery, that Ocwen Loan Servicing, LLC provide the information as to whom the creditor was with which the debtor would be contracting. On June 1, 2015, the *Montelongo* debtor reported that Ocwen Loan Servicing, LLC had not informally provided the information and had failed to respond to the Bankruptcy Rule 2004 subpoena. *Id.*; Report, Dckt. 170. A motion to compel production of the discovery and for compensatory sanctions was filed by the *Montelongo* debtor. *Id.*; Motion, Dckt. 165.

Though the information was not provided by Ocwen Loan Servicing, LLC in response to the subpoena, U.S. Bank, N.A., Trustee, filed a response identifying itself as the creditor. *Id.*; Response, Dckt. 161, and Declaration, Dckt. 162. Again, it was the creditor who remedied the failure of Ocwen Loan Servicing, LLC to respond to the subpoena and identify the creditor. The creditor in *Montelongo* paid the attorneys' fees and costs relating thereto the failure of Ocwen Loan Servicing, LLC to comply with the subpoena. *Id.*; Stipulation, Dckt. 178.

In reviewing the *Montelongo* file, the court notes that on July 16, 2015, other counsel (not Aldridge Pite, LLP) for Ocwen Loan Servicing, LLC filed a request for special notice in which the attorneys state that they are "Counsel for Secured Creditor, Ocwen Loan Servicing, LLC." *Id.*, Dckt. 182. This statement is in conflict with the Reply Brief and Declaration filed by

U.S. Bank, N.A., Trustee, stating that it was the creditor and Ocwen Loan Servicing is the servicing agent. See *Id.*; Response, Dckt. 161, and Declaration, Dckt. 162. Possibly it was merely a typographical error by the other counsel in rushing to file a request for notice, or possibly it is evidence of a standard of practice for Ocwen Loan Servicing, LLC to actively misrepresent who the creditor is in bankruptcy cases.

In a recent adversary proceeding, the consumer debtor was required to sue both OneWest Bank, FSB and Ocwen Loan Servicing, LLC over the failure to reconvey a deed of trust following the completion of the Chapter 13 plan and payment in full of the allowed secured claim for which the deed of trust was collateral. *Gil Raposo and Joanne Raposo v. Ocwen Loan Servicing, LLC and OneWest Bank, FSB*. Bankr. E.D. Cal. Adv. Pro. 15-2095. Neither Ocwen Loan Servicing, LLC nor OneWest Bank, FSB responded to the complaint or filed any opposition to entry of the default judgments against each of them.

In *Raposo v. Ocwen et al.*, the need to sue both Ocwen Loan Servicing, LLC and OneWest Bank, FSB was caused by the documents filed in the *Raposo* bankruptcy case. Bankr. E.D. Cal. 09-27153. In the *Raposo* bankruptcy case, Proof of Claim No. 7 was filed on May 27, 2009, by OneWest Bank, FSB. On September 4, 2015, a Notice of Transfer of Claim was filed stating that the claim of OneWest Bank, FSB had been transferred to Ocwen Loan Servicing, LLC. *Id.*; Dckt. 96. No copies of any transfer documents were attached to the Notice and no amended Proof of Claim No. 7 setting forth Ocwen Loan Servicing, LLC's standing as a creditor had been filed. The Certificate of Service for the Notice of Transfer of Claim did not provide notice to OneWest Bank, FSB that Ocwen Loan Servicing, LLC asserted that OneWest Bank, FSB was no longer the creditor and that Ocwen Loan Servicing, LLC had obtained all of the rights held by OneWest Bank, FSB for the debt upon which Proof of Claim No. 7 was based. The Notice of Transfer in the *Raposo* bankruptcy case was signed by attorney Audrey J. Dixon (Fla. Bar No. 39288), of the Robertson, Anschutz & Schneid, PL law firm, as the attorney for Ocwen Loan Servicing, LLC.

RESPONSIBILITY OF THE COURT TO ADDRESS CONDUCT OF PARTIES AND COUNSEL

Federal Rule of Bankruptcy Procedure 9011 imposes obligations on both attorneys and parties appearing before the bankruptcy court. This Rule covers pleadings filed with the court. If a party or counsel violates the obligations and duties imposed under Rule 9011, the bankruptcy court may impose sanctions, whether pursuant to a motion of another party or *sua sponte* by the court itself. These sanctions are corrective, and limited to what is required to deter repetition of conduct of the party before the court or comparable conduct by others similarly situated.

A bankruptcy court is also empowered to regulate the practice of law in the bankruptcy court. *Peugeot v. U.S. Trustee (In re Crayton)*, 192 B.R. 970, 976 (B.A.P. 9th Cir. 1996). The authority to regulate the practice of law includes the right and power to discipline attorneys who appear before the court. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991); see *Price v. Lehitine*, 564 F. 3d at 1058. Bankruptcy courts have jurisdiction and the authority to impose sanctions, even when the bankruptcy case itself has been dismissed. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384,395 (1990); *Miller v. Cardinale (In re DeVille)*, 631 F.3d 539, 548-549 (9th Cir. 2004). The bankruptcy court judge also has the inherent civil contempt power to enforce compliance with its

lawful judicial orders. *Price v. Lehtinen (in re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); see 11 U.S.C. § 105(a).

The primary purpose of a civil contempt sanction is to compensate losses sustained by another's disobedience of a court order and to compel future compliance with court orders. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1192 (9th Cir. 2003). The contemptor must have an opportunity to reduce or avoid the fine through compliance. *Id.* The federal court's authority to regulate the practice of law is broader, allowing the court to punish bad faith or willful misconduct. *Price v. Lehitine*, 564 F.3d at 1058. However, the bankruptcy court cannot issue punitive sanctions pursuant to its power to regulate the attorneys or parties appearing before it. *Id.* at 1059.

SEPTEMBER 11, 2015 HEARING

In light of what appears to be the repeated conduct of Ocwen Loan Servicing, LLC and its attorneys not identifying the actual creditor for which Ocwen Loan Servicing, LLC was the loan servicer, the court finds it necessary to bring not only Ocwen Loan Servicing, LLC in to address this issue, but the attorneys in this case who have provided conflicting statements under penalty of perjury. An unintentional misidentification of a creditor creates a series of civil issues in which consumer debtors fail to obtain relief against the real creditor. The orders (such as order valuing claim, avoiding lien, or confirmed plan providing specific treatment for a claim) could be rendered ineffective against the real creditor. The court, consumer debtor, attorneys for other parties in interest, the U.S. Trustee, and the Chapter 13 trustee would then have to wrestle with issues of the incorrect person having been identified as the creditor. At the easiest end of the spectrum of issues, the court and parties in interest would have to revisit multiple motions from five years earlier (assuming a sixty-month plan) if the same, actual creditor who engaged the loan servicer continues to be the creditor. At the other end of the spectrum, the court and others could be presented with a significantly more complex set of statutory and constitutional issues of what effect orders and the prior motions would have on *bona fide* third-party debt purchasers (who may well be secondary, tertiary, or further removed purchaser from the actual creditor) contending that they had no knowledge of the purported alteration of the rights and interests relating to the note upon which the actual creditor's claim was based.

Leaving what could be hypothesized as an innocent error, the court has stated on multiple occasions in hearings involving loan servicers that there may be a more sinister business plan afoot. The loan servicer and creditor could intentionally have the loan servicer make the false representations that loan servicer is the creditor to hide the identity of the real creditor. The loan servicer, intentionally misrepresenting itself as creditor, would then be the subject of various motions affecting its "claim," and ultimately the discharge of the "debt" upon which loan servicer's claim was based. The consumer debtor, attorneys for the debtor and other parties in interest, the court, and the Chapter 13 trustee would then be defrauded into believing that rights and interests were being properly adjudicated in the bankruptcy case. Then, after five years in a Chapter 13 case, the actual creditor would disavow any knowledge of the loan servicer's conduct, contending that the power of attorney and agency agreement never granted any ownership rights to the loan servicer or to stand in the place of creditor for such determinations. That creditor would contend that it, and its claim, have passed, unscathed, through

the bankruptcy case since it was never served with any pleadings or process, as required by Federal Rule of Bankruptcy Procedure 7004, and the consumer debtor owes the obligation in full, plus years of accrued interest, penalties, and fees. Equally sinister is that the scheme could include the preconceived business plan to sell the debt to various "innocent" third-party purchasers who would attempt to assert they are an innocent *bona fide* purchaser, shielded by the lack of disclosure of the bankruptcy by the loan servicer or creditor of the bankruptcy. The creditor then blames the loan servicer, which is an entity that has been placed in its own Chapter 7 bankruptcy case. By the time of the loan servicer's Chapter 7 bankruptcy case, its assets would have been exhausted in the final months of operation paying its "key employees and officers" trying to "operate the business," which had the effect of draining all of the economic value from the loan servicer.

RESPONSE

Ocwen Loan Servicing, LLC, Aldridge Pite, LLP, Megan E. Lees, Philip J. Giles, Jonathan C. Cahill, and David E. McAllister (collectively "Respondents") filed a Response to this Court's Order to Appear and Show Cause on September 30, 2015. Dckt. 97. This is a collective response filed by Christopher M. McDermott, an Aldridge Pite, LLP attorney. The Aldridge Pite, LLP law firm has, and is now, representing GMAC Mortgage, Inc., Ocwen Loan Servicing, LLC, Seterus, Inc., the various individual attorneys, and itself in responding to the Order to Appear and Show Cause.

The Response argues that Ocwen Loan Servicing, LLC, as the "Note holder," is the creditor pursuant to federal and California law, and thus Ocwen has standing to file the Payment Change Notices and Transfer of Claim. Further, Respondents assert that sanctions should not be issued because Respondents provided accurate factual and legal claims that identified Ocwen as the Creditor, and because Respondents filed the Proof of Claim in good faith compliance with Federal Rules of Bankruptcy Procedure 3001.

Respondents first argue that Ocwen is entitled to enforce the Note as the Noteholder. Under 11 U.S.C. § 101(10), a "creditor" includes an "entity that has a 'claim' against the debtor that arose at the time of or before the order for relief concerning the debtor." A "claim" is defined under 11 U.S.C. § 101(5) as:

(A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or

> (B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

Respondents assert that the § 101(5) "right to payment" is defined under the California Commercial Code. Under California Commercial Code § 3301, a person or entity that is the "holder" is entitled to enforce a negotiable instrument. California Commercial Code § 1201(a)(21)(a) defines a "holder" as "the person in possession of a negotiable instrument that is payable either to bearer, or to an identified person that is the person in possession…." Respondents argue that an instrument is payable to the bearer if it does not

state a payee, under California Commercial Code § 3109(a)(2); also, physical possession of the note is not required to enforce the note's terms. *Veal v. Am. Home Mortg. Servicing, Inc.* (*In re Veal*), 450 B.R. 897, 909 (9th Cir. BAP 2011).

With this interpretation, Respondents contend that Ocwen is the "holder" of the Note because Ocwen had physical possession of the Note and the Note is indorsed and payable in blank. FN.4. This possession made Ocwen the "person entitled to enforce" the Note under California law. As the "person entitled to enforce" under the California Commercial Code, Ocwen had a "right to payment" and was thus a "creditor" under 11 U.S.C. § 101(10). On these grounds, Respondents argue Ocwen could file the February 2013 and February 2014 Payment Change Notices and Transfer of Claim. Dckt. 97, p. 6-7.

FN.4. The court is using the California Commercial Code § 3204 definition of "indorsed:"

> (a) "Indorsement" means a signature, other than that of a signer as maker, drawer, or acceptor, that alone or accompanied by other words is made on an instrument for the purpose of (1) negotiating the instrument, (2) restricting payment of the instrument, or (3) incurring indorser's liability on the instrument, but regardless of the intent of the signer, a signature and its accompanying words is an indorsement unless the accompanying words, terms of the instrument, place of the signature, or other circumstances unambiguously indicate that the signature was made for a purpose other than indorsement. For the purpose of determining whether a signature is made on an instrument, a paper affixed to the instrument is a part of the instrument.
>
> (b) "Indorser" means a person who makes an indorsement.
>
> (c) For the purpose of determining whether the transferee of an instrument is a holder, an indorsement that transfers a security interest in the instrument is effective as an unqualified indorsement of the instrument.
>
> (d) If an instrument is payable to a holder under a name that is not the name of the holder, indorsement may be made by the holder in the name stated in the instrument or in the holder's name or both, but signature in both names may be required by a person paying or taking the instrument for value or collection.

EVIDENCE PRESENTED

Declaration of Roberto Montoya

The court has been presented with the Declaration of Roberto Montoya to provide testimony on behalf of Ocwen Loan Servicing, LLC. Dckt. 103. Ocwen was ordered to provide credible, admissible, evidence which was to include any documents and information:

A. provided to each of the above named attorneys prior to the attorney stating under penalty of perjury that Ocwen Loan Servicing, LLC was the creditor, having transferred the claim of GMAC Mortgage, LLC; and

B. that the claim of GMAC Mortgage, LLC was transferred to Ocwen Loan Servicing, LLC as of April 16, 2013, and which was in existence and actually used by employees, officers, and other representatives of Ocwen Loan Servicing, LLC in asserting on or before April 16, 2013, that it had transferred the claim from GMAC Mortgage, LLC, and that Ocwen was the creditor in this case in place of GMAC Mortgage, LLC.

Mr. Montoya states his qualifications to testify as being employed as a Senior Loan Analyst for Ocwen Loan Servicing, LLC. Mr. Montoya does not state how long he has been so employed. Mr. Montoya does not provide any testimony as to his personal knowledge of the operations of Ocwen Loan Servicing, LLC concerning the activities in question or any responsibilities he has with respect to those activities.

While Mr. Montoya declares he is being "employed" as a Senior Loan Analyst, he does not expressly state that he is an employee or officer of Ocwen Loan Servicing, LLC. In another case, another person stated that she was a Senior Loan Analyst for Ocwen Loan Servicing, LLC, but is employed by Ocwen Financial, Inc. The court has set a hearing in that case for the employee of Ocwen Financial, Inc. to explain person's relationship with Ocwen Loan Servicing, LLC and why she was a competent witness to testify as to the books and records of Ocwen Loan Servicing, LLC.

Mr. Montoya states, as part of his undefined job responsibilities, that he has personal knowledge of the types of records maintained by Ocwen Loan Servicing, LLC. He does testify that he has reviewed Ocwen Loan Servicing, LLC's books and records and provides his testimony based upon what he has read in the records.

Mr. Montoya testifies that the "loan" is evidenced by a promissory note dated November 1, 2007. Mr. Montoya further testifies that the records of Ocwen Loan Servicing, LLC indicate that the servicing rights for the "loan" were transferred from GMAC Mortgage, LLC to Ocwen Loan Servicing, LLC, effective February 16, 2013.

This witness states that the records "reflect" that Fannie Mae owned the note at the time the servicing rights were acquired by Ocwen Loan Servicing, LLC. Mr. Montoya also states that the servicing of the note would have been done in a manner consistent with the Fannie Mae Guidelines at the time. Mr. Montoya does not testify as to what specific servicing activities were undertaken by Ocwen Loan Servicing, LLC.

Mr. Montoya testifies that on or about October 1, 2012, GMAC Mortgage, LLC sent the Note upon which the claim is based to its [unidentified] counsel. Mr. Montoya then seeks to testify, based solely on information and belief (and not having any personal knowledge or based upon the records of Ocwen Loan Servicing, LLC), that said [unidentified] counsel maintained physical possession of the note until Ocwen Loan Servicing, LLC obtained the servicing rights.

Mr. Montoya, as a Senior Loan Analyst for Ocwen Loan Servicing, LLC, does not provide any testimony as to who is currently in physical possession of the Note. He does not testify, and does not purport to assert, that Ocwen Loan Servicing, LLC is in possession of the Note. All Mr. Montoya claims is that Ocwen Loan Servicing, LLC contends it is the current loan servicer for Fannie Mae.

Mr. Montoya's testimony is incredible in several ways. First, he does not (or cannot) testify as to who is in physical possession of the Note for which Ocwen Loan Servicing, LLC asserts it is the loan servicer. Second, his testimony is that a Note (which is asserted to be indorsed in blank and being negotiable bearer paper) has been shipped around from servicer to unidentified attorneys. This is inconsistent with the testimony provided in other cases concerning Fannie Mae and the custody of the notes. Except for the very rare circumstances when the actual note is required, a separate custodian is responsible for holding the note for Fannie Mae.

Mr. Montoya provides his legal conclusion that Ocwen Loan Servicing, LLC was the "holder" of the Note. Mr. Montoya's testimony does not support such a contention. He cannot testify who is in phyusical possession of the note. He does not define what he means by "holder" of the note. And he admits that possession was transferred to some attorney for GMAC Mortgage, LLC.

Declaration of David E. McAllister

Respondents filed the Declaration of David E. McAllister on September 30, 2015. Dckt. 99.

David McAllister, the managing partner in the bankruptcy department of Aldridge Pite, LLP, the successor of the merger between Pite Duncan, LLP and Aldridge Connors, LLP, provided his declaration. Dckt. 99. Mr. McAllister declares he was the managing partner for the Pite Duncan Bankruptcy Department from February 28, 2013, to February 18, 2014. Further, he states that Megan Lees, Philip Giles, and Jonathan Cahill were all associates under another [unidentified] supervising associate attorney who is no longer employed at Mr. McAllister's law firm. Mr. McAllister testifies that he worked with the supervising associate attorney to design and implement Pite Duncan's policies and procedures on verifying whether a client has standing as a creditor in a case. *Id.*, ¶¶ 4-6.

The procedures in place at that time were:

5. A referral from a client "generally" would include (a) a written verification as to who was in possession of the note and (b) who "qualified" as the holder of the note. (This appears to indicate that the attorneys relied upon the "legal conclusion" as to holder rights provided by the person who sent over the written verification, rather than the attorney determining the respective rights.) The testimony makes no reference to what representative of the client referred the matter to his firm or the representative's qualifications to make the determination as to who was the note holder.

6. In addition to written verification from the clients, Pite Duncan would also receive the relevant loan documents, including the promissory note, security instrument, and assignments(s) of the

security instrument. Pite Duncan requested the current note be properly indorsed (blank or special indorsement). (The testimony is ambiguous on whether the attorneys would receive copies of the loan documents or the original documents.)

7. In most cases, Pite Duncan's clients would provide the name of the actual owner of the note.

8. The Pite Duncan attorney would "confirm" the identity of the creditor and the standing to enforce the note. This confirmation process included reviewing proofs of claims and the law firm's records.

Id., ¶ 7.

The above testimony shows that, at best, the attorneys were provided information by third-parties, which the attorney relied upon. This is common in representing clients, as the attorney rarely will have any personal knowledge of the underlying transaction. If the attorney has such personal knowledge, then he/she is generally unable to serve both as the legal advocate and the witness for the case.

Mr. McAllister's declaration continues to provide additional testimony. He states that, in response to the September 12, 2012 objection to GMAC Mortgage, LLC's Proof of Claim #1, GMAC Mortgage, LLC sent the original, blue-ink Note to Pite Duncan's Sacramento office for the Debtor attorney's inspection. He further testifies that Aldridge Pite's business records indicate that the original note was locked in the Pite Duncan safe in its Sacramento Office for all times relevant to the "Time Period" (February 28, 2013 through February 18, 2014). *Id.*, ¶ 11.

Mr. McAllister testifies that Ocwen Loan Servicing, LLC transmitted electronic messages to Pite Duncan, LLP informing Pite Duncan, LLP that Ocwen Loan Servicing, LLC was the "Note holder" on February 22, 2013, March 6, 2013, and February 20, 2014. *Id.*, ¶ 10. Exhibit 4 provides copies of the electronic messages. Dckt. 98.

Unfortunately, Exhibit 4 is redacted in a manner that there is no relevant information available to the court. There is no information as to who the transmission is from, the subject of the transmission, the text of the transmission, to whom the transmission was sent, the date of the transmission, or the basis for the redacted statements.

A reasonable inference to be drawn from Exhibit 4 is that it does not support the testimony of Mr. McAllister. FN.5.

FN.5. At best, the information provided on this exhibit consists of,

"Comments:

Please provide the name in which we should proceed under.

Resolution:

Ocwen Loan Servicing, LLC [redacted]
The "Comment" does not seek the name of the owner of the note or the person in

physical possession of a note indorsed in blank.

Mr. McAllister's testimony continues, stating the original blue-ink note, which was locked in the Sacramento, California safe of Pite Duncan, bore two endorsements - one from GMAC Bank to BMAC Mortgage, LLC and a second by GMAC Mortgage, LLC in blank. Dckt. 99, ¶ 12. A copy of the copy of the Note from the Aldridge Pite records is stated to be provided as Exhibit 2. Dckt. 98.

Finally, Mr. McAllister testifies that Fannie Mae is the loan owner "at the time Ocwen serviced the same, Ocwen serviced the Loan in accordance with Fannie Mae Single Family 2012 Servicing Guide." Dckt. 99, ¶ 13. However, the Fannie Mae Servicing Guidelines state that "possession" may be temporarily be given to a servicer only when,

1. The note is held at Fannie Mae's DDC, then Fannie Mae's possession will be on behalf of the servicer, or

2. If the note is held by a document custodian on Fannie Mae's behalf, the custodian also has possession of the note on behalf of the service.

Mr. McAllister does not declare that the original note was (1) not in the physical possession of Fannie Mae or (2) in the possession of a document custodian for Fannie Mae. Rather, he testifies that the note was being held by an attorney for GMAC Mortgage, LLC, or subsequently, the attorney for Ocwen Loan Servicing, LLC. While Mr. McAllister's testimony might be a basis, if it is the custodian of documents for Ocwen Loan Servicing, LLC, to contend that Ocwen Loan Servicing, LLC was in possession of the Note (as opposed to Pite Duncan, LLP merely being the holder for itself), it was not in compliance with the Servicing Guide of Fannie Mae.

Declaration of Megan E. Lees

Respondents submitted the Declaration of Megan E. Lees on September 30, 2015. Dckt. 100. Ms. Lees testifies Pite Duncan received a referral from Ocwen on February 18, 2013, to prepare and file a Notice of Mortgage Payment Change. The February 2013 Notice of Mortgage Payment Change relates to the Proof of Claim #1 and mortgage loan secured by real property located at 4950 3rd Street, Rocklin CA. Attached to the Proof of Claim was: a Note dated November 1, 2007 with a principal balance of $235,000.00; a Deed of Trust dated November 1, 2007; an Assignment of Deed of Trust dated December 14, 2011; and a Modification Agreement dated October 7, 2010. Dckt. 100, ¶ 4.

On February 25, 2013, Ms. Lees testifies that Ocwen sent an electronic message to Pite Duncan confirming that Ocwen is the Note holder for the 2013 Notice of Mortgage Payment Change. Ms. Lees relies upon Exhibit 4, the redacted electronic transmissions which the court previously noted provides no information to the court. Ms. Lees states that based on the regular dealings with Ocwen, that message indicated that Ocwen was in possession of the Note, either personally or through an agent. *Id.*, ¶ 5. Ms. Lees does not provide any personal knowledge testimony as to this Note, or evidence of communicating with anyone at either Ocwen Loan Servicing, LLC or Fannie Mae concerning this Note.

Ms. Lees declares that she reviewed the completed February 2013 Notice of Mortgage Payment Change. In doing so, Lees reviewed: (1) "the name of the party in possession of the Note, as confirmed by our client; and (2) the Proof of Claim, along with the relevant loan documentation to determine whether it supports the creditor's representation that it is the note holder." *Id.* at ¶ 8.

Ms. Lees further testifies that prior to her review, Pite Duncan received confirmation from Ocwen: "(1) …to file the [PCN] identifying Ocwen as the creditor because it was the Note holder; (2) Ocwen was the party in possession of the promissory note; and (3) Ocwen was also the authorized loan servicer." *Id.* ¶ 9. However, Ms Lees does not testify what constituted such "confirmation."

The declaration continues with Ms. Lees stating that Pite Duncan retained a copy of the Note indorsed in blank *Id.*, ¶ 10. However, Ms. Lees does not testify that she inspected the original note or how she knows it was locked in the Sacramento, California safe of Pite Duncan, LLP (as testified to by Mr. McAllister). It appears from Ms. Lees' declaration and the documents in this case that Ms. Lees is located in the San Diego, California office of Pite Duncan, LLP and not Aldridge Pite, LLP.

Ms. Lees then provides conflicting testimony in which she states, under penalty of perjury, "…the Note was indorsed in blank and it was confirmed that Ocwen was in possession of the same,…" *Id.*, ¶ 11. Mr. McAllister testifies that Pite Duncan, LLC was in physical possession of the Note during the "Time Period."

Ms. Lees argues that Ocwen is properly the creditor because it was in possession of the Note. Her testimony does not show how she had personal knowledge of such a fact, or even that someone at Ocwen Loan Servicing, LLC represented to her that Ocwen Loan Servicing, LLC was in possession of the Note indorsed in blank.

Finally, Ms. Lees testifies that Ocwen Loan Servicing, LLC gave Pite Duncan permission to put the footnote in the February 2013 Notice of Mortgage Payment Change to place other parties on notice that Ocwen obtained the servicing rights. *Id.*, ¶ 16.

Declaration of Philip J. Giles

Philip J. Giles provided his Declaration in response to the Order to Appear and Show Cause. Dckt. 102. Mr. Giles' Declaration on the process of generating the March 6, 2013 Notice of Transfer of Claim is substantively very similar to Ms. Lees' Declaration. However, Mr. Giles provides additional testimony as follows.

When Ocwen Loan Servicing, LLC requested the March 6, 2013 Notice of Transfer of Claim, Mr. Giles also relied upon the electronic transmissions, which has been presented as Exhibit 4, for stating that Ocwen Loan Servicing, LLC was the creditor. *Id.*, ¶ 5. He further states that he concluded that, based on Pite Duncan, LLP's "course of dealing" with Ocwen Loan Servicing, LLC, he assumed that Ocwen Loan Servicing, LLC would be in possession of the note directly or through some undisclosed agent. Again, as with Ms. Lees, this directly conflicts with Mr. McAllister's testimony that Pite Duncan, LLP had

physical possession of the Note. It also indicates that it would be unusual, and not part of the normal "course of dealing" for Pite Duncan, LLP, to be in physical possession of a note indorsed in blank for Ocwen Loan Servicing, LLC.

Declaration of Jonathan C. Cahill

The Declaration of Jonathan C. Cahill has been filed in response to the Order to Appear and Show Cause. Dckt. 101. Mr. Cahill's Declaration is substantively very similar to Ms. Lees' and Mr. Giles' Declarations.

Mr. Cahill also testifies that he has personal knowledge of how the Pite Duncan, LLP and Aldridge Pite, LLP law firms maintain their business records. Mr. Cahill was licensed as an attorney in December 2012, practiced for about a year with Pite Duncan, LLP and a year with Aldridge Pite, LLP. Such in-depth knowledge of a law firms records systems would be unusual for a first or second year associate attorney, even more so when there is a merger of two law firms.

With respect to the Objection to the Notice of Mortgage Payment Change, Mr. Cahill states that it was filed by another attorney, at another law firm, for Ocwen Loan Servicing, LLC. (Notice filed on April 24, 2015.) From the face of the Notice, it appears that Ocwen Loan Servicing, LLC instructed other attorneys to act on its behalf. It appears that, when doing so, Ocwen Loan Servicing, LLC was not in possession of the original note, it being locked in the safe at the Sacramento, California Office of Aldridge Pite, LLP. Dckt. 99 (McAllister Declaration).

When Mr. Cahill learned that an objection had been filed to the April 2015 Notice of Payment Change, he testifies he contacted Ocwen Loan Servicing, LLC to see if it wanted to retain his firm to fie a response to the April 2015 Notice of Payment Change. *Id.*, ¶ 17. When he was advised that the servicing of the loan was being transferred to Seterus, Inc., Mr. Cahill then contacted Seterus, Inc. to see if it wanted to hire Aldridge Pite, LLP to represent it with respect to the Notice of Payment Change which the Law Offices of Les Zieve had filed. *Id.*, ¶ 17, 18.

Mr. Cahill further testifies that when he contacted Seterus, Inc., the representative could not tell him what interests or rights it had in the Note. *Id.*, ¶ 19. The reason stated is because Seterus, Inc. had only recently acquired whatever rights or interests it could possibly have to assert. Mr. Cahill does not provide any testimony as to explain why Seterus, Inc. is represented to have purchased rights, yet not know what rights it purchased.

Declaration of Evan M. Daily

Evan M. Daily has filed his Declaration in response to this court's Order to Show Cause. Dckt. 105. The court did not order Mr. Daily to respond or to appear at the October 20, 2015 hearing. The court recognized the Mr. Daily was no longer with the Aldridge Pite, LLP firm and that his involvement dates back to 2012, having filed the proof of claim for GMAC Mortgage, LLC.

Mr. Daily testifies that he has been working at his current law firm, Thomas, Lyding, Cartier & Gaus, LLP, since October 2012. *Id.* He states that he has no recollection of events, or any knowledge of facts bearing on the issues identified in the Order to Appear and Show Cause.

EXHIBITS

The Exhibits filed in response to the Order to Appear and Show Cause include a copy of what is identified as the "Fannie Mae Single Family 2012 Servicing Guide." Exhibit 3, Dckt. 98. This Guide includes the text quoted by Mr. McAllister in his declaration. This includes the language that either Fannie Mae or a third-party custodian will be in possession of the original notes, and that possession by Fannie Mae or the custodian will be deemed to be possession by the servicer for specified purposes. The Guide also provides, that in the unusual situation where the servicer must have possession fo the note for a legal proceeding, possession may be obtained from Fannie Mae or the custodian. The Guide specifies a procedure, including the use of a Request for Release/Return of Documents (Form 2009) by the servicer. *Id.*, § 20.207.03. The court is provided with only one page of the Guide.

Exhibit 6 filed in response is a Notice of Servicing Transfer dated February 6, 2013, sent on GMAC Mortgage letterhead and executed by both GMAC Mortgage and Ocwen Loan Servicing. *Id.* This Notice states that only the right to collect payments from the borrower has been transferred, but the borrower can "Rest assured this transfer of servicing does not affect any term or condition of the mortgage documents, other than those directly related to servicing of your loan. There will be no change to your account number or payment address, only to the name of the company to which you make your payment."

This representation by GMAC Mortgage, LLC and Ocwen Loan Servicing, LLC runs contrary to the contention that the identity of the "creditor" and the person entitled to enforce the rights under note have changed.

Exhibit 7 is a Notice of Servicing Transfer dated July 13, 2015, on Ocwen Loan Servicing, LLC letterhead. *Id.* It states that "the servicing [of the Neumann loan] is being transferred, effective August 1, 2015. This means that after this date, a new servicer will be collecting the mortgage loan payments. Nothing else about the mortgage loan will change."

As with the joint GMAC Mortgage/Ocwen Loan Servicing, LLC letter, this statement is inconsistent that new persons will acquire rights in the note and the right to enforce the note.

RIGHTS OF A HOLDER

There is little dispute as to the law and the rights of a person who is in possession of a promissory note indorsed in blank to enforce those rights – even if improperly or illegally in possession of the promissory note. Cal. Com. Code § 3205(b), 3301. That is not the focus of the court's Order to Appear.

DISCUSSION

The problem identified by the court is that various attorneys at the Pite Duncan, LLP/Aldridge Pite, LLP law firms take it upon themselves to make statements under penalty of perjury to the court. Not only are some of the statements conflicting, but the testimony provided in response to the Order to Show Cause clearly shows that the attorneys had no personal knowledge of the various "facts" which they state to be true and correct under penalty of

perjury.

At best, the testimony presented is that the attorneys were provided with the electronic transmissions filed as Exhibit 4. These all but completely redacted documents do not state that Ocwen Loan Servicing, LLC is in possession of the note. Even if they did, the various attorneys have no personal knowledge of such facts, but are merely parroting what some unidentified person at Ocwen Loan Servicing, LLC may have said. Testimony or statements under penalty of perjury are more than merely parroting what someone else says.

From the record, there appears to be no person at Ocwen Loan Servicing, LLC who can testify to having been in possession of the Note, to being in possession of the Note, or to having transferred possession of the Note.

Mr. Montoya's testimony is equally carefully circumscribed. As far as possession of the note, it's limited to "information and belief testimony." No grounds are provided for a non-expert witness testifying in federal court under penalty of perjury based solely on "information and belief." (As opposed to pleading in a complaint or motion a necessary element based on information and belief.)

Mr. McAllister's testimony is that in 2012 the Pite Duncan, LLP law firm came into possession of the original note, indorsed in blank, and has continued in possession of it since 2014. He offers no testimony as to why Pite Duncan, LLP, and now possibly Aldridge Pite, LLP, has continued possession of this negotiable paper when no evidence has been provided that possession has ceased outside a statement in Mr. McAllister's declaration.

Further, no credible testimony is provided as to why a creditor, such as Fannie Mae, would transfer a negotiable paper out to loan servicers or to the attorneys for loan servicers. As provided in California Commercial Code §§ 3205(b) and 3301, anyone who gets his or her hands on the negotiable paper can treat is as their own - whether legally or illegally in possession of the paper. Such conduct not only appears highly unlikely, but would be inconsistent with federally insured financial institutions or tax payer underwritten entities such as Fannie Mae.

Such testimony is in conflict with the Fannie Mae Servicer Guide presented by Aldridge Pite, LLP and its attorneys as part of the response. Exhibit 3, Dckt. 98. Except for extraordinary legal proceedings, the original note is either in Fannie Mae's possession or of a third-party custodian. In another case, the standard Fannie Mae third-party custodial agreement was presented to the court. On its face, the excerpt of the Fannie Mae Guide does not provide for the Pite Duncan, LLP/Aldridge Pite, LLP law firm to properly be in possession of a note owned by Fannie Mae.

Aldridge Pite, LLP and the responding attorneys argue that this court should not impose sanctions on two grounds. First, each contends that they had a "reasonable basis," on the facts and law known at the time of filing, to assert that Ocwen was a creditor in this case.

From the court's reading of the testimony provided and exhibits, the court does not agree. This is not a situation where at issue is whether there was a reasonable belief for making allegations in a complaint or motion. Rather, the attorneys were taking on themselves to make statements under

penalty of perjury. The "best" basis presented is in redacted Exhibit 4, in which someone asks "Please provide the name in which we should proceed." This does not even touch on the issue of who owns the note, nor on who has or had physical possession of the note.

More importantly, each of the attorneys admit that he/she had no personal knowledge of who was in possession of the note. Rather, each attorney merely made the statements under penalty of perjury based on what someone else told them.

October 6, 2015 Notice of Transfer

On October 6, 2015, Fannie Mae, the creditor, filed a Transfer of Claim Other Than For Security. Dckt. 106. By this Notice, Fannie Mae states that the Claim filed in the name of Ocwen Loan Servicing, LLC has been transferred to Fannie Mae. The Notice is signed by attorneys for Fannie Mae.

October 20, 2015 Hearing

At the October 20, 2015 hearing, xxxxxxxxxxxxxxxxxxxx.

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Order to Show Cause is [discharged, no sanctions ordered, and the case shall proceed in this court] / [sustained, no other sanctions are issued pursuant thereto, and the case is dismissed].