

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis  
Chief Bankruptcy Judge  
Sacramento, California

October 29, 2015 at 1:30 p.m.

1. [11-30546-E-13](#) WILLIAM/DENISE NISSEN  
Lorraine W. Crozier

ORDER TO APPEAR  
9-28-15 [[128](#)]

**Tentative Ruling:** The Order to Appear 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).

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Local Rule 9014-1(f)(3) 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, Gina Feezer, Ocwen Loan Servicing LLC, Ocwen Financial Corporation, CFBP, Office of the California Attorney General, Office of the U.S. Attorney, C. Scott Green, and Office of the United States Trustee on September 30, 2015. By the court's calculation, 29 days' notice was provided.

The Order to Appear 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 -----  
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**The Order to Appear is -----.**

On September 28, 2015, the court issued an Order to Appear. Dckt. 128. In relevant part, the court ordered:

Therefore, upon review of the two motions to approve a loan modification between the Debtors and Ocwen Loan Servicing, LLC; no testimony or evidence provided by a managing member or employee of Ocwen Loan Servicing, LLC; Ocwen Financial Corporation having one of its employees provide testimony as to the business operations of an indirect subsidiary; that employee not testifying to any personal knowledge as to the books and records of Ocwen Loan Servicing, LLC (other than repeating what she read in some documents provided to her by an unidentified person or persons); the relative simplicity for an entity to provide *bona fide*, good faith testimony to authenticate records and document an interest in a promissory note;

The hearing on the Motion for Order Approving a Loan Modification filed by the Debtor having come on for hearing on September 22, 2015; counsel or representative for Ocwen Loan Servicing, LLC or Ocwen Financial Corporation not being present; and good cause appearing; and good cause appearing,

**IT IS ORDERED** that (1) a senior management of Ocwen Financial Corporation;(2) a managing member of Ocwen Loan Servicing, LLC; and (3) Gina Feezer, and their respective attorneys of choice, shall appear at the hearing on October 29, 2015, at 1:30 p.m., in person, in Department E of the United States Bankruptcy Court, 501 I Street, Sixth Floor, Sacramento, California, with no telephonic appearances allowed on this matter.

**IT IS FURTHER ORDERED** that on or before October 15, 2015 each of the persons ordered to appear shall file and serve on all parties served the instant Order to Appear any and all credible, properly authenticated evidence as to:

- (1) the existence of Ocwen Loan Servicing, LLC;
- (2) why Ocwen Loan Servicing, LLC has no managing member or employee which could provide the declaration;
- (3) all of Ms. Feezer's conduct, actions, and activities by which she has personal knowledge to provide the testimony concerning the books and records of Ocwen Loan Servicing, LLC, and business dealings; and
- (4) identifying all of the declarations or other testimony Ms. Feezer has provided in other state or federal court proceeding relating to the books, records, notes, business operations of, or loans purported to be owned or serviced by, Ocwen Loan Servicing, LLC since January 1, 2014.

**IT IS FURTHER ORDERED** that all of the above responsive pleadings and evidence ordered to be produced shall be filed and served on or before October 15, 2015.

## BACKGROUND

On September 22, 2015, the court held a hearing on William Nissen and Denise Nissen's ("Debtor") Motion for Order Approving a Loan Modification. Dckt. 118. The Debtor named Ocwen Loan Servicing, LLC as the creditor offering the loan modification.

This was not the Debtor's first attempt at getting court approval for a loan modification. On May 30, 2014, the Debtor filed their first Motion for Order Approving a Loan Modification, naming Ocwen Loan Servicing, LLC as the creditor. Dckt. 46. At the hearing on July 1, 2014, the court denied without prejudice the Motion on the grounds that the court could not determine by the evidence presented if Ocwen Loan Servicing, LLC is the creditor in fact who has the authority to enter into loan modifications with the Debtor or merely the loan servicer. Specifically, the court stated:

The Loan Modification Agreement identifies Ocwen Loan Servicing, LLC as the entity offering the loan modification and does not indicate that it is the actual creditor to enter into a contract to modify the Loan. The Loan Modification Agreement does not state that it is a contract or agreement between Ocwen Loan Servicing, LLC and the Debtors, but only uses the non-specific language, "Ocwen Loan Servicing, LLC ('Ocwen') is offering you this Loan Modification Agreement...."

Interestingly, Ocwen Loan Servicing, LLC is not a party to sign this Loan Modification Agreement. The signature block for the other party to the Loan Modification Agreement provides that it is signed by "Mortgage Electronic Registration Systems, Inc. ["MERS"] - Nominee for Service." This is problematic for several reasons. . . .

In this case, Proof of Claim No. 10 was filed for OneWest Bank, FSB. The claim is for \$252,871.45 and is asserted to be secured by the Debtors' property at 8609 El Sobrante Way, Orangevale, California. The person filing the proof of claim for OneWest Bank, FSB, is identified as "Ryan M. Davies, Claimant's Counsel." [Payments] on the claim are to be sent to "OneWest Bank, FSB 00 Cashiering Dept., 6900 Beatrice Drive, Kalamazoo, MI."

The Loan Modification Agreement does not specifically identify the Note that is being modified, but does state that the principal balance is \$246,092.03. It appears that this the same debt as the one upon which Proof of Claim No. 10 is based. . . .

On October 15, 2013, a Transfer of Claim was filed for Proof of Claim No. 10. Dckt. 37. The Transferee is identified as Ocwen Loan Servicing, LLC and the Transferor is identified as OneWest Bank, FSB. The person signing the Transfer document is "Nancy Lee, Esq.," who is identified as the Transferee's Agent. This document directs that payments

on the claim are to be sent to Attn: Payment Processing, 3451 Hammond Avenue, Waterloo, IA 50702. No documents, such as an assignment of the Note, assignment of the claim, copy of note endorsed in blank and certification that it is in the possession of the Transferee is attached to the this document.

As this court has stated on many occasions, the fundamental requirement for any federal court to exercise federal court judicial power is that there must be a case or controversy between the parties for whom relief is sought. U.S. Constitution Article III, Sec. 2. Here, there is nothing to indicate that there are two real parties in interest whose rights are being impacted. While the Debtors are before the court, it appears that at best a servicing company, for an unidentified creditor in this case, is being inserted into the Loan Modification Agreement as a "placeholder," who may or may not be authorized to modify the creditor's rights and claim.

This court will not issue "maybe effective, maybe not effective" orders. The residential mortgage market has already suffered serious black eyes from incorrectly identified lenders, transferees, nominees, robo-signing of declarations and providing false testimony under penalty of perjury, and documents which do not truthfully and accurately identify the parties to the transaction. It is not too much for least sophisticated consumer debtors to have the true party with whom they are purportedly contracting identified in the written contract. It is not too much, and is Constitutionally mandated, that the true parties appear in federal court to have their rights and interests determined, and the relief they seek issued.

If Ocwen Loan Servicing, LLC is the loan servicer for the actual creditor and is the authorized agent for the creditor, then it can properly exercise that power. In doing so, it can properly disclose the identity of the true creditor, disclose that it is exercising its agent authority, and execute the documents (rather than MERS) as the agent for the true creditor.

Dckt. 62.

Over a year later, on August 20, 2015, the Debtor filed another Motion for Order Approving a Loan Modification, once again naming Ocwen Loan Servicing, LLC as the creditor. Dctk. 118. However, the Debtor provided the declaration of Gina Feezer "a senior loan analyst employed by Ocwen Financial Corporation, whose indirect subsidiary is Ocwen Loan Servicing, LLC." Dckt. 118.

At the September 22, 2015 hearing, the court expressed its concerns over the representations made by Ms. Feezer in her declaration. Specifically, the court stated:

The exhibits and declaration of Ms. Feezer just further

highlights the confusion in the Fannie Mae Servicing Guide. Ms. Feezer's declaration appears to suggest that Ocwen is both the servicer of a loan held by Fannie Mae and also the holder of the underlying note which was transferred to it by One West Bank, FSB. However, none of the exhibits provided by the Debtor show any such transfer or a copy of the current Deed of Trust and Note denoting who is the actual lender. The Feezer declaration offers conflicting testimony that pursuant to the Servicing Guide it is the "holder" of the Note, but that the note has also been directly transferred from One West to Ocwen Loan Servicing, LLC.

The Declaration provided by Gina Feezer raises significant doubts as to whether an entity identified as Ocwen Loan Servicing, LLC actually exists. Ms. Feezer states that she is a "senior loan analysis" who is "employed by Ocwen Financial Corporation," which has an "indirect subsidiary [named] Ocwen Loan Servicing, LLC." Ms. Feezer provides no testimony as to what is this "indirect subsidiary" relationship.

More significantly, while Ms. Feezer provides her legal conclusion that she is "authorized" to provide testimony as to the books and records of the "indirect subsidiary" of the company which employs her, she does not testify to any actual factual basis for the court reaching the same conclusion. She also fails to provide any testimony why Ocwen Loan Servicing, LLC has no managing members or employees who can provide accurate, credible, competent testimony concerning the operation of Ocwen Loan Servicing, LLC. Ms. Feezer's lack of testimony is pregnant with admissions that Ocwen Loan Servicing, LLC may well not exist as a bona fide, viable, entity which is a proper party in a federal court.

Further, Ms. Feezer testifies that at best, she has no personal knowledge of any facts concerning Ocwen Loan Servicing, LLC, but is merely stating what she has read from some records which she believes (for an unstated reason) are those of Ocwen Loan Servicing, LLC. She does not provide any information about how such records are maintained, under whose control and supervision the records are made and maintained, or why she has access to any such records. She again merely provides a legal conclusion that as an employee of Ocwen Financial Corporation, the records of an indirect subsidiary (for which she is not an managing member, employee, or representative) are maintained in the ordinary course of business. FN.1

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FN.1. Ms. Feezer's testimony would be akin to an employee of Bank of America Corporation testifying about the records of BAC Loans Servicing, LP concerning the loans originated and maintained by Countrywide Loan Servicing, LP. A shareholder of an entity, which has an interest in an entity that has an interest in another, indirect subsidiary entity that has

records, is not made a competent, credible witness concerning the business, operations, and records of the indirect subsidiary merely because the person is employed by a shareholder of an entity that has an interest in an entity that has an interest in the indirect subsidiary.

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Dckt. 125

In light of this being the Debtor's second attempt at court approval for loan modification, the court granted the authorization to enter the modification, but emphasized that the court is doing so "based in large part of the personal testimony of Gina Feezer. The court, Debtor, and bankruptcy estate have justifiably relied upon the statements of fact provided by Ms. Feezer, individually and in her capacity as an employee of Ocwen Financial Corporation and in providing the testimony purportedly for Ocwen Loan Servicing." Dckt. 125.

While the instant issue concerning the modification has been resolved, there remains the fundamental and overarching concern over the representations made by Ocwen Loan Servicing, LLC and Ocwen Financial Corporation to these consumers over their role in the loans they, collectively and individually, purport to both service and hold.

Repeatedly, in a number of cases, the court has expressed its concern over the representations of Ocwen Loan Servicing, LLC, and Ocwen Financial Corporation, which asserts that an indirect subsidiary relationship to Ocwen Loan Servicing, LLC. In light of the representations made by Ms. Feezer as to the role of Ocwen Loan Servicing, LLC and Ocwen Financial Corporation, it is apparent that the court needs to order the appearance of these entities.

#### **OCWEN FINANCIAL CORPORATION AND OCWEN LOAN SERVICING, LLC RESPONSE**

Ocwen Financial Corporation and Ocwen Loan Servicing, LLC filed a response to this court's Order to Appear on October 15, 2015. Dckt. 134. Both entities (collectively referred to as "Respondents") are represented by Robert Norman, Jr., an attorney at Houser & Alison, APC.

Respondents address this court's September 28, 2015 Order to Appear by first explaining the relationship of Ocwen Loan Servicing, LLC and Ocwen Financial Corporation, then by describing Gina Feezer's authority to act on behalf of Ocwen Loan Servicing, LLC.

#### **Relationship of Ocwen Financial Corporation and Ocwen Loan Servicing, LLC**

Respondents assert that Ocwen Financial Corporation is a Florida corporation organized in February 1988, and headquarters in West Palm Beach, Florida. It is publicly traded on the New York Stock Exchange under the stock ticker symbol OCN, and is registered with the SEC. Ocwen Financial Corporation is a financial services holding company which is engaged in the servicing and origination of mortgage loans. It conducts these services through its subsidiaries. A Certificate of Good Standing for Ocwen Financial Corporation is offered as Exhibit 3.

Ocwen Loan Servicing, LLC is organized and existing Delaware limited

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liability company. A Certificate of Good Standing for Ocwen Loan Servicing, LLC is attached as Exhibit 4. FN.1.

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FN.1. Respondents fail to assert the evidentiary basis for admitting Exhibits 3 and 4. Respondents neither assert grounds for authentication nor for a hearsay exception in their memorandum or in Feezer's Declaration. Respondents suggest that the documents were obtained from an unnamed, ambiguously identified "Company's Office of the Corporate Secretary." Dckt. 135 ¶ 4. According to the Feezer Declaration, "Company" refers to Ocwen Financial Corporation, Ocwen Loan Servicing, LLC, and Ocwen Loan Servicing, LLC's managing member, Ocwen Mortgage Servicing, Inc. Id.; Dckt. 135 ¶ 4. It appears that the witness, and the entities, make little effort to make any legal or functional distinction between Ocwen Financial Corporation and Ocwen Loan Servicing, LLC.  
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Ocwen Financial Corporation owns the common stock of its primary operating subsidiary, Ocwen Mortgage Servicing, Inc. and "directly or indirectly owns all of the outstanding stock of its other primary operating subsidiaries, including [Ocwen Loan Servicing, LLC]." Dckt. 134 p. 4. There is no single "individual" that is the managing member of Ocwen Loan Servicing, LLC. Since 2012, Ocwen Loan Servicing, LLC has been a wholly owned subsidiary of Ocwen Mortgage Servicing, Inc.

In the declaration of Ms. Feezer, based on her meeting with the "corporate secretary" of Ocwen Financial Corporation, Ocwen Mortgage Servicing, Inc., and Ocwen Loan Servicing, LLC, testifies that Ocwen Mortgage Servicing, Inc. is now the single member of Ocwen Loan Servicing, LLC.

In the Response, in lieu of having a managing member of Ocwen Loan Servicing, LLC, a "Board of Managers" [whose identity is not disclosed] manages Ocwen Loan Servicing, LLC. Further, the employees of Ocwen Financial Corporation primarily handle the day to day affairs of Ocwen Loan Servicing. Response, p. 2:15-21.

Ocwen Financial Corporation, through its "subsidiaries," including Ocwen Loan Servicing, LLC, performs primary and master servicer activities for investors and other loan servicers, including: Federal National mortgage Association (Fannie Mae); Federal Home Loan Mortgage Corporation (Freddie Mac); the Government National mortgage Association (Ginnie Mae); and private-label securitizations.

#### Gina Feezer's Authority to Act on Behalf of Ocwen Loan Servicing, LLC

Respondents summarize Gina Feezer's employment through 10 years of employment. Ms. Feezer was employed by Ocwen Federal Bank FSB in October 2004. Dckt. 135 ¶ 5. Ocwen Financial Bank, FSB performed "similar functions as [Ocwen Loan Servicing, LLC]." Id. Ocwen Loan Servicing, LLC then became the successor in interest to Ocwen Financial Bank, FSB in June 2005. Ms. Feezer's employment status transitioned to Ocwen Loan Servicing, LLC. Ms. Feezer remained employed with Ocwen Loan Servicing, LLC until October 4, 2012, when her employment "transitioned to [Ocwen Financial Corporation]," the ultimate parent company of Ocwen Loan Servicing, LLC. Id. Respondents claim Ms. Feezer was "authorized to act for [Ocwen Loan Servicing, LLC] at all times relevant through [Ocwen

Loan Servicing, LLC]'s Written Consent and Company Resolution." *Id.*, ¶ 10.

Ms. Feezer claims to have worked as a bankruptcy manager position from October 2004 to May 2006. In May 2006, Ms. Feezer transitioned to her current role as a Senior Loan Analyst at Ocwen Loan Servicing, LLC. *Id.*, ¶ 6, 7. In her position as a Senior Loan Analyst, Ms. Feezer conducts "careful research of litigated and other disputed matters being handled by the Company." FN.2. This includes loan setup, investor relations, customer service, default servicing, bankruptcy, and outside counsel to review the "Company's business and loan records, practices, and general handling of various loans and properties." Occasionally, Ms. Feezer reviewed and verified litigation documents, such as discovery responses, declarations, affidavits, and also testified "for the Company at depositions and in court."

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FN.2. Feezer's Declaration and Respondents' Motion refer to Ocwen Financial Corporation, Ocwen Mortgage Servicing, Inc., and Ocwen Loan Servicing, LLC collectively as "the Company." This court only quotes that term to emphasize the vagueness in the documents filed and the lack of separateness of these entities as stated by these entities and the employees.  
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In the underlying bankruptcy case, Ms. Feezer reviewed "the records that pertain to the Debtors...and that she gained knowledge of them from the business records of [Ocwen Loan Servicing, LLC] through its computerized systems which has the Debtors' loan servicing history, transaction history, internal comment log between the departments and electronic imaging of the loan files." *Id.*, ¶ 9.

#### **GINA FEEZER'S DECLARATION**

Accompanying Respondent's response is Ms. Feezer's declaration. Dckt. 135.

When discussing the corporate structure of the entities, Ms. Feezer provides the following explanation, without any supportive documentation:

I have also conferred with the Company's Office of the Corporate Secretary ("Corporate Secretary") to confirm my understanding of the corporate formation and the distinction among Ocwen Financial Corporation ("OFC"), the parent company, and its subsidiaries, including [Ocwen Loan Servicing, LLC], and its managing member, Ocwen Mortgage Servicing, Inc. ("OMS") (collectively the "Company").

Dckt. 135, ¶ 4.

Ms. Feezer states that in October 2004, she was employed by Ocwen Financial Bank, FSB, which Ms. Feezer testifies performed similar functions as Ocwen Loan Servicing, LLC. Ms. Feezer states that Ocwen Loan Servicing, LLC then became the successor in interest to Ocwen Financial Bank, FSB in June 2005, which resulted in Ms. Feezer's employment being transitioned to Ocwen Loan Servicing, LLC. Ms. Feezer remained employed with Ocwen Loan Servicing, LLC until October 4, 2012 at which time her employment transitioned to Ocwen Financial Corporation where Ms. Feezer is currently employed.



Ms. Feezer states that in her ten years employed by Ocwen Financial Bank, FSB, Ocwen Loan Servicing, LLC, and currently Ocwen Financial Corporation, she is "familiar with the business records maintained by [Ocwen Loan Servicing, LLC] for the purpose of handling mortgage loans." Dckt. 135, ¶ 6.

While Ms. Feezer stated that she was currently employed by Ocwen Financial Corporation, Ms. Feezer later states that in May 2006, she transitioned to her current role as a Senior Loan Analyst at Ocwen Loan Servicing, LLC. Compare Dckt. 135, ¶ 5 with ¶ 7. In this position, Ms. Feezer testifies that her job duties include:

...conducting careful research of litigated and other disputed matters being handled by the Company. This includes [her] continued working with the Company's various departments, including loan setup, investor relations, customer service, default servicing, bankruptcy, and outside counsel to review the Company's business and loan records, practices, and general handling of various loans and properties. From time to time, [Ms. Feezer] review and verify discovery responses, prepare declarations and affidavits, and testify for the Company at depositions and in the court.

Dckt. 135, ¶ 7.

Ms. Feezer then continues in the declaration to then state she is "employed by [Ocwen Financial Corporation], the ultimate parent company of [Ocwen Loan Servicing, LLC]" and is "authorized to act for [Ocwen Loan Servicing, LLC]." To support this, Ms. Feezer identifies Exhibit 1 which is a Unanimous Written Consent of the Managers of Ocwen Loan Servicing, LLC which Ms. Feezer testifies is dated November 10, 2014. Exhibit 1 was filed under seal.

Reviewing Exhibit 1, the court first notes that the Unanimous Written Consent of the Managers of Ocwen Loan Servicing, LLC is dated October 7, 2015, and not November 10, 2014 as stated by Ms. Feezer under penalty of perjury. Without disclosing the substance, Exhibit 1 is highly redacted and does not specify that Ms. Feezer, in fact, had any authority to act on behalf of Ocwen Loan Servicing, LLC or access to the business records of Ocwen Loan Servicing, LLC. To the extent that her name is actually in the document, it has been redacted, for which reason the court cannot fathom. FN.3.

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FN.3. The redacting of such non-confidential, critical information only works to diminish the credibility of Ocwen Financial Corporation, Ocwen Loan Servicing, LLC (to the extent it exists) and the witnesses and counsel who are presenting the arguments and evidence to the court.  
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The Consent does not identify any specific person to have the authority to act on behalf of Ocwen Loan Servicing, LLC or which entity such person works for. Instead, the Consent merely states "Senior Loan Analyst."

Ms. Feezer also states that the Ocwen Loan Servicing, LLC Certificate of Secretary, filed under seal as Exhibit 2, also provides for the authority of Ms. Feezer to act on behalf of Ocwen Loan Servicing, LLC. Exhibit 2 is also

heavily redacted. This document appears to authorize the non-Ocwen Loan Servicing, LLC to perform almost every function of Ocwen Loan Servicing, LLC. Ms. Feezer identifies her name as being include on the list the non-Ocwen Loan Servicing, LLC employees authorized to exercise the rights and powers of Ocwen Loan Servicing, LLC.

Ms. Feezer continues and testifies that based on her meeting with the Corporate Secretary, Ms. Feezer understands that "[Ocwen Financial Corporation] owns the common stock of its primary operating subsidiary, [Ocwen Mortgage Servicing, Inc.] and directly or indirectly owns the outstanding stock of its other primary operating subsidiaries, including [Ocwen Loan Servicing, LLC.]" Dckt. 135, ¶ 12.

Based on the meeting with the Corporate Secretary and her understanding of the "Company," Ms. Feezer testifies that:

[T]here is no single individual that is the managing member of [Ocwen Loan Servicing, LLC]. [Ocwen Financial Corporation] was the sole member of [Ocwen Loan Servicing, LLC]. Since 2012, [Ocwen Loan Servicing, LLC] has been a whole owned subsidiary of ([Ocwen Mortgage Servicing, Inc.]). [Ocwen Mortgage Servicing, Inc.] is now a wholly owned subsidiary of [Ocwen Financial Corporation]. [Ocwen Mortgage Servicing, Inc.] is now the sole member of [Ocwen Loan Servicing, LLC].

Dckt. 135, ¶ 13.

Ms. Feezer concludes by stating that filed as Exhibit 5 under seal is a list of all the declaration and other testimonies that she can recall which Ms. Feezer has provided in state or federal court proceedings relating the books, records, notes, and business operations of Ocwen Loan Servicing, LLC.

#### **APPLICABLE LAW**

The court has been concerned with loan servicing companies which misrepresent themselves as creditors, as it has been with debtors who incorrectly identify (and seek relief against) loan servicing companies which are not the creditor. Hearing the explanations offered as to who Ocwen Loan Servicing, LLC is, the court feels compelled to review basic law relating to the doctrine of alter ego. When discussing interrelated corporate structures, the doctrine of alter ego or piercing the corporate veil "refers to situations where there has been an abuse of corporate privilege, because of which the equitable owner of a corporation will be held liable for the actions of the corporation." *Roman Catholic Archbishop of San Francisco v. Superior Court*, 15 Cal.App.3d 405, 411, 93 Cal.Rptr. 338 (1971). The purpose of the doctrine is "to bypass the corporate entity for the sole purpose of avoiding injustice." *Mesler v. Bragg Management Co.*, 39 Cal.3d 290, 301 (1985).

Courts in this district has provided the following test to determine if one corporation is the alter ego of another:

To establish that one entity is the alter ego of another, a plaintiff must show "(1) that there [is] such unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist and (2) that,

if the acts are treated as those of the corporation alone, an inequitable result will follow." *Id.*; *In re Intelligent Direct Marketing*, 818 B.R. 579, 588 (E.D. Cal. 2014). Sister entities may be determined to be alter egos if the entities are so organized or controlled as to make one entity "merely an instrumentality, agency, conduit or adjunct of another." *McLoughlin v. L. Bloom Sons Co., Inc.*, 206 Cal.App.2d 848, 851-52, 24 Cal.Rptr. 311 (1962).

*In re SK Foods, LP*, 499 B.R. 809, 840-41 (Bankr. E.D. Cal. 2013).

To determine whether there is a sufficient unity of interest and ownership to support alter ego liability, courts consider a long list of factors:

[1] Commingling of funds and other assets, failure to segregate funds of the separate entities, and the unauthorized diversion of corporate funds or assets to other than corporate uses;

[2] the treatment by an individual of the assets of the corporation as his own;

[3] the failure to obtain authority to issue stock or to subscribe to or issue the same;

[4] the holding out by an individual that he is personally liable for the debts of the corporation;

[5] the failure to maintain minutes or adequate corporate records, and the confusion of the records of the separate entities;

[6] the identical equitable ownership in the two entities;

[7] the identification of the equitable owners thereof with the domination and control of the two entities;

[8] identification of the directors and officers of the two entities in the responsible supervision and management;

[9] sole ownership of all of the stock in a corporation by one individual or the members of a family;

[10] the use of the same office or business location;

[11] the employment of the same employees and/or attorney;

[12] the failure to adequately capitalize a corporation;

[13] the total absence of corporate assets, and undercapitalization;

[14] the use of a corporation as a mere shell, instrumentality or conduit for a single venture or the business of an

individual or another corporation;

[15] the concealment and misrepresentation of the identity of the responsible ownership, management and financial interest, or concealment of personal business activities;

[16] the disregard of legal formalities and the failure to maintain arm's length relationships among related entities;

[17] the use of the corporate entity to procure labor, services or merchandise for another person or entity;

[18] the diversion of assets from a corporation by or to a stockholder or other person or entity, to the detriment of creditors, or the manipulation of assets and liabilities between entities so as to concentrate the assets in one and the liabilities in another;

[19] the contracting with another with intent to avoid performance by use of a corporate entity as a shield against personal liability, or the use of a corporation as a subterfuge of illegal transactions;

[20] and the formation and use of a corporation to transfer to it the existing liability of another person or entity.

*Bank of Montreal v. SK Foods, LLC*, 476 B.R. 588, 597-98 (N.D. Cal. 2012); *Roman Catholic Archbishop*, 15 Cal.App.3d at 411, 93 Cal.Rptr. 338 (citing *Associated Vendors, Inc. v. Oakland Meat Co.*, 210 Cal.App.2d 825, 837, 26 Cal.Rptr. 806 (1962)); *Zoran Corp. v. Chen*, 185 Cal.App.4th 799, 811-12 (Cal.Ct.App.2010). This list is not exhaustive, and no one factor is determinative. *Zoran Corp.*, 185 Cal.App.4th at 811-12.

The second requirement of the alter ego test requires that "adherence to the fiction of the separate existence of the corporation would, under the particular circumstances, sanction a fraud" or "work an injustice to a third person." *Bank of Montreal*, 476 B.R. at 600 (citing *Associated Vendors Inc. v. Oakland Meat Co.*, 210 Cal.App.2d 825, 837, 26 Cal.Rptr. 806 (Cal.Ct.App.1962))(quotation omitted).

## **DISCUSSION**

After reviewing the response, Ms. Feezer's declaration, and the accompanying exhibits, the court is concerned that the evidence provided shows that Ocwen Loan Servicing, LLC is an "entity" in name only. Rather, it may well be that Ocwen Financial Corporation, using the names Ocwen Mortgage Servicing, Inc. and Ocwen Loan Servicing, LLC is really just one big entity, hiding behind the name Ocwen Loan Servicing, LLC. Hiding behind the name may be part of a coordinated efforts with its attorneys to erect a facade to hide it from the court and insulate it from financial liability for its conduct from consumers and the courts. This may explain why "Ocwen Loan Servicing, LLC" failed to respond to several discovery subpoenas in other unrelated cases or respond to motions to compel and for sanctions.

Within its own supporting documents, Ocwen Loan Servicing, LLC and

Ocwen Financial Corporation confuse themselves. For instance, Ms. Feezer, in her five-page declaration, switches from being an employee of one entity to the other. The following are direct quotes from Ms. Feezer's declaration as to where she is currently employed:

1. "As a result, in June 2005, my employment transitioned to [Ocwen Loan Servicing, LLC]. I remained employed with [Ocwen Loan Servicing, LLC] until October 4, 2012. At that time, my employment transitioned to [Ocwen Financial Corporation] to the present time."
  - a. Dckt. 135, ¶ 5.
2. "During my more than 10 years employment with [Ocwen Federal Bank FSB], [Ocwen Loan Servicing, LLC], and now [Ocwen Financial Corporation], I have closely interacted with the Company's numerous departments on a daily basis, including the bankruptcy department."
  - a. Dckt. 135, ¶ 6
3. "In May 2006, I transitioned to my current role as a Senior Loan Analyst at [Ocwen Loan Servicing, LLC]. As a Senior Loan Analyst, I perform a number of roles within [Ocwen Loan Servicing, LLC]'s Law Department."
  - a. Dckt. 135, ¶ 7.
4. "Even though I am employed by [Ocwen Financial Corporation], the ultimate parent company of [Ocwen Loan Servicing, LLC], I am authorized to act for [Ocwen Loan Servicing, LLC]."
  - a. Dckt. 135, ¶ 10.

The conflating of the entities is just further highlighted in the exhibits filed by the parties. The Unanimous Written Consent of the Managers of Ocwen Loan Servicing, LLC, dated October 7, 2015 (not November 10, 2014 as purported by Ms. Feezer) indicates that "Senior Loan Analyst" at an unspecified entity may act on behalf of Ocwen Loan Servicing, LLC (defined in the Consent as the "Company"). The Consent does not state where this "Senior Loan Analyst" works, which may be specified in the redacted portion of the consent.

The Ocwen Loan Servicing, LLC Certificate of Secretary does not provide any clarification either. In fact, the Certificate explicitly identifies Ms. Feezer as an employee of Ocwen Loan Servicing, LLC. While this Certificate is dated December 21, 2011, which is during a time Ms. Feezer declares she was an employee of Ocwen Loan Servicing, LLC, it does not state that Ms. Feezer, now an employee of Ocwen Financial Corporation, (presumably, at least), has the authority to act on behalf of Ocwen Loan Servicing, LLC.

Looking at the way in which the "entities" filed their combined Response appears to convolute the discussion by using acronyms and defined terms which do not clearly distinguish between actual separate legal entities. This is evident by the first line of the parties' response which states:

Houser & Allison, APC, on behalf of Ocwen Loan Servicing, LLC ("OLS"), and Ocwen Financial Corporation ("OFC") (OLS and OFC are collectively referred to as "Ocwen" herein).

Dckt. 134. Such a collective defined term as "Ocwen" to include both Ocwen Loan Servicing, LLC and Ocwen Financial Corporation appears to be an affirmative statement that the two entities are functionally nothing more but a single entity or enterprise. The court finds it surprising that counsel would not clearly distinguish between two separate legal entities, if they were two separate legal entities.

Looking further at the response, the responding entities appear to further "muck the waters" by using nearly identical acronyms (i.e. OFC, OLS, OMS) to what the court interprets as an attempt to give the appearance of corporate separation without there in fact being one.

Ms. Feezer's declaration does the same by providing a single defined term for all of the allegedly separate entities. Ms Feezer states:

I have also conferred with the Company's Office of the Corporate Secretary ("Corporate Secretary") to confirm my understanding of the corporate formation and the distinction among Ocwen Financial Corporation ("OFC"), the parent company, and its subsidiaries, including [Ocwen Loan Servicing, LLC], and its managing member, Ocwen Mortgage Servicing, Inc. ("OMS")(collectively the "Company").

Dckt. 135, ¶ 4. Based on the declaration, and the defined term "Company" to include all three entities, Ms. Feezer declares under the penalty of perjury that all three of the Ocwen entities share a single Corporate Secretary.

In total, the purported distinction between Ocwen Mortgage Servicing, Inc., Ocwen Loan Servicing, LLC, and Ocwen Financial Corporation appears to be nothing more than a canard created by the single Ocwen "Company" in an attempt to avoid liability. Ms. Feezer could not even correctly state which entity employs her, which just further emphasizes that these entities are all one in the same.

#### **OCTOBER 27, 2015 HEARING**

At the hearing, -----

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 Appear 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 Appear is **xxxxx**.

**Final Ruling:** No appearance at the October 29, 2015 hearing is required.  
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Local Rule 9014-1(f)(1) Motion

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on August 19, 2015. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion for Contempt 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). The defaults of the non-responding parties and other parties in interest are entered.

<b>The Motion for Contempt is continued to 1:30 p.m. on November 19, 2015, no telephonic appearances permitted.</b>
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Robert and Kathleen Ash ("Debtor") filed the instant Motion for Civil Contempt as to Ocwen Loan Servicing, LLC on August 20, 2015. Dckt. 130. The Debtor requests to the court to find Ocwen Loan Servicing, LLC ("Creditor") in civil contempt under 11 U.S.C. § 105 and Fed. R. Bankr. P. 3002.1, 9014 and 9020 for violations of the discharge injunction.

The Debtor filed the instant bankruptcy case on June 13, 2009. On April 12, 2010, the Debtor's plan was confirmed. On July 15, 2015, the Chapter 13 Trustee filed a Notice of final Cure Payment. Dckt. 109.

On August 4, 2014, Creditor filed a Response to Notice of Final Cure indicating that the arrears were paid and the next payment dues was for July 1, 2014. Dckt. 112.

The Debtor states that since the final payment made by the Trustee, the Debtor has made all payments to Creditor, as required by the loan, except for one due to the confusion caused by the demands of Creditor and payments were made, but Creditor has returned them demanding back payments that were cured in the Chapter 13 plan.

The Debtor states that they made a Qualified Written Request and was provided a full accounting was provided on July 13, 2015. Dckt. 133, Exhibit 14. The Debtor alleges that the accounting reveals that post-petition payments were applied to amounts claimed during the cure of the bankruptcy case.

The Debtor argues that attempts to collect payments cured by the

Chapter 13 Plan, as found to have been paid in full as of August 4, 2014 based on the Creditor's response to the Trustee's Notice of Final Cure Mortgage Payment are in violation of the discharge.

Debtor asserts that he made all necessary payment to Creditor and any delinquency is based on the return of payments . Dckt. 133, Exhibit 16.

The Debtor alleges is that since the response to the Notice of Final Cure of Mortgage Payment, Creditor has told Debtor that they are more than \$15,000.00 in arrears and that they must pay the entire amount. The Debtor further alleges that the Creditor threatened to filed foreclosure on August 20, 2015 and the Debtor has received phone calls to collect the arrears.

The Debtor argues that they have also suffered emotional stress.

Additionally, the Debtor argues that the Creditor violated Fed. R. Bankr. P. 3002.1 because Creditor did not file any notice of post petition fees and, therefore, should not be charging Debtor for Bankruptcy related fees.

The Debtor notes that the breach of the contract between Debtor and Creditor post petition is a matter for the state courts to resolve but the Debtor is seeking resolution as to the alleged violation of the discharge injunction and violation of Fed. R. Bankr. P. 3002.1 for the res judicata effect it may have on state court.

The Debtor is requesting that:

1. Creditor be found in civil contempt for violating the "automatic stay" and Rule 3002.1 and sanctioned
2. A further hearing to determine emotional damages
3. Pay the Debtor's reasonable attorneys' fees

#### **APPLICABLE LAW**

##### Civil Contempt

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).

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.

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 contemtor 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.

#### Federal Rule of Bankruptcy Procedure 3002.1

Pursuant to Fed. R. Bankr. P. 3002.1(c), a creditor holding a claim must do the following:

##### (c) Notice of fees, expenses, and charges

The holder of the claim shall file and serve on the debtor, debtor's counsel, and the trustee a notice itemizing all fees, expenses, or charges (1) that were incurred in connection with the claim after the bankruptcy case was filed, and (2) that the holder asserts are recoverable against the debtor or against the debtor's principal residence. The notice shall be served within 180 days after the date on which the fees, expenses, or charges are incurred.

Furthermore, if the holder of a claim fails to properly notice, the Rule provides the following:

##### (I) Failure to notify

If the holder of a claim fails to provide any information as required by subdivision (b), (c), or (g) of this rule, the court may, after notice and hearing, take either or both of the following actions:

(1) preclude the holder from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case, unless the court determines that the failure was substantially justified or is harmless; or

(2) award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure.

#### **VIOLATION OF ORDER CONFIRMING PLAN**

As Debtor addresses in the Points and Authorities, 11 U.S.C. § 524(I) provides that the failure of a creditor to properly apply payments received

through a bankruptcy plan shall also constitute a violation of the discharge injunction. Such a violation is addressed by holding the violating party in contempt, subjecting the violator to civil sanctions. *Espinosa v. United Student Aid Funds*, 553 F.3d 1193, 1205 (9th Cir. 2008); *affrm.* 440 U.S. 260 (2010). The Ninth Circuit cases addressing the bankruptcy court imposing the civil sanctions for violating the discharge injunction include: *Price v. Lehtinen (In re Lehtinen)*, 564 F.3d 10-52 (9th Cir. 2009); *Renwick v. Bennett (In re Bennett)*, 298 F.3d 1059, (9th Cir. 2002). In *ZiLOG, Inc. v. Corning (In re ZiLOG, Inc.)*, 450 F.3d 996, 1007 (9th Cir. 2006), the Ninth Circuit Court of Appeals states,

"Section 524 of the bankruptcy code provides that discharge "operates as an injunction against the commencement or continuation of an action . . . to collect, recover or offset any [discharged] debt as a personal liability of the debtor." 11 U.S.C. § 524(a)(2). A party who knowingly violates the discharge injunction can be held in contempt under section 105(a) of the bankruptcy code. See *In re Bennett*, 298 F.3d at 1069; *Walls v. Wells Fargo Bank, N.A.*, 276 F.3d 502, 507 (9th Cir. 2002) (holding that civil contempt is an appropriate remedy for a willful violation of section 524's discharge injunction). In *Bennett*, we noted that the party seeking contempt sanctions has the burden of proving, by clear and convincing evidence, that the sanctions are justified. We cited with approval the standard adopted by the Eleventh Circuit for violation of the discharge injunction: "[T]he movant must prove that the creditor (1) knew the discharge injunction was applicable and (2) intended the actions which violated the injunction." *Bennett*, 298 F.3d at 1069 (citing *Hardy v. United States (In re Hardy)*, 97 F.3d 1384, 1390 (11th Cir. 1996)).

As the Ninth Circuit Court of Appeals noted in Footnote 11 in *ZiLog*, "Of course, where the facts are not in dispute, no hearing need be held. See, e.g., *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1191-92 (9th Cir.2003) (contempt sanctions upheld where creditor admitted having notice of the automatic bankruptcy stay, yet took no steps to remedy his violation of the stay)." *Id.* at 1008, FN.11.

#### **SEPTEMBER 22, 2015 HEARING**

At the hearing, based on the stipulation filed by the parties the day of the hearing, the court continued the hearing to 1:30 p.m. on October 29, 2015. Dckt. 146. The court ordered that any opposition shall be filed and served on or before October 22, 2015. The court also ordered that no telephonic appearances would be permitted. Lastly, the court required that Bryan Cave LLP, attorneys for Ocwen Loan Servicing LLC, shall file and serve on the U.S. Trustee and the Chapter 13 Trustee copies of the engagement letter (redacted as appropriate) by which said law firm was engaged as counsel for Ocwen Loan Servicing LLC in this contested matter.

#### **OCTOBER 20, 2015 ORDER**

On October 21, 2015, the court issued an order continuing the hearing to 1:30 p.m. on November 19, 2015 based on the stipulation of the parties.

**October 29, 2015 at 1:30 p.m.**

Dckt. 148. The court ordered that Ocwen Loan Servicing LLC shall file any opposition by November 5, 2015 and any responses shall be filed by November 12, 2015.

#### **DECLARATION OF CHRISTOPHER SCHMIDT**

Christopher Schmidt, a partner at Bryan Cave LLP, filed a declaration on October 22, 2015. Dckt. 149. Mr. Schmidt states that in his capacity as the relationship partner for Ocwen Loan Servicing, LLC, he has "access to [his] law firm's business records, including the business records for and relating to Ocwen's retention of Bryan Cave in this contested matter."

Mr. Schmidt state that Ocwen Loan Servicing, LLC is the servicer of the loan, without providing the basis for such knowledge. Mr. Schmidt continues and states that "Ocwen" utilizes a "certain group of law firms to handle litigated matter throughout the country" and that Bryan Cave is one of those firms. Mr. Schmidt states that when Ocwen retains the firm, the matter is opened on CounselLink, in which Bryan Cave is sent an email notifying the firm that a case has been referred. Upon notification, Bryan Cave accepts the referral via the CounselLink website.

Mr. Schmidt states that on September 1, 2015, the firm was retained as counsel for Ocwen to defend the instant Motion. On September 2, 2015, Mr. Schmidt states that the firm received an email notice indicating the instant matter had been opened and referred to Bryan Cave in CounselLink. Once accepted, the matter is referred to the office closest geographically to the court where the matter is being heard, here the Bryan Cave San Francisco Office.

Mr. Schmidt attached the redacted email that notified the firm of the referral. Dckt. 149, Exhibit A. The email indicates that "Ocwen Financial" referred "In Re: Robert C. Ash" on September 1, 2015.

The court notes that the "Email" provided is so redacted that it fails to provide any useful information for the court. The best the court can tell from it is:

- A. It was sent from someone at [ask@lexisnexis.com](mailto:ask@lexisnexis.com).
- B. It was sent to some unidentified person at an unidentified email address. (That information having been redacted.)
- C. It relates to a matter relating to "Ocwen Financial," not Ocwen Loan Servicing, LLC.
- D. Under matter title it states "In Re: Robert C. Ash."

Exhibit A. Everything else is redacted out. From this, it appears that some entity named "Ocwen Financial" was involved, not Ocwen Loan Servicing, LLC. It appears to be evidence that either no counsel was retained for Ocwen Loan Servicing, LLC or that Ocwen Loan Servicing, LLC is part of and the alter-ego of "Ocwen Financial." This email conflicts with the testimony under penalty of perjury provided by Christopher Schmidt, who states that his law firm was retained to represent "Ocwen Loan Servicing, LLC." Declaration, p. 2:2-3, 22-

23.

The court is concerned that this highly redacted document has not been provided in good faith or to substantiate the contention that the law firm has actually be engaged to represent Ocwen Loan Servicing, LLC. The court has, and is, addressing the "Ocwen Entities" and other counsel they have hired filing redacted documents which fail to provide any meaningful information in support of what an attorney tells the court the document would say if it was not redacted.

#### **DISCUSSION**

In light of the court issuing an order continuing the matter, the hearing on the instant Motion is continued to 1:30 p.m. on November 19, 2015, no telephonic appearances permitted.

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 Motion For Contempt filed by Robert C. Ash and Kathleen H. Ash, Debtors, the court having continued the hearing pursuant to the stipulation of the parties, the court having reviewed the highly redacted exhibits filed by the Bryan Cave, LLP law firm, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Bryan Cave, LLP and Ocwen Loan Servicing, LLC shall file under seal unredacted copies of the document filed as Exhibit A, Dckt. 149, on October 22, 2015, which was improperly attached to the declaration of Christopher J. Schmidt. L.B.R. 9004-1 and the Revised Guidelines for Preparation of Documents; which require that the motion, points and authorities, each declaration, and the exhibits, which exhibits may be combined into one document, are filed as separate pleadings. The unredacted exhibit shall be filed on or before **November 12, 2015.**