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HEARING DATE: APRIL 8, 2014
HEARING TIME: 10:00AM
RESPONSE DUE BY: APRIL 3, 2014

**IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
MANHATTAN DIVISION**

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IN THE MATTER OF

CHAPTER 13

**CARLOS MOTA,
DEBTOR**

CASE NO: 10-13989(shl)

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CARLOS MOTA,

Plaintiff

AP # 13-01553-alg

v.

WELLS FARGO BANK, NA, and

**HSBC BANK USA NATIONAL
ASSOCIATION AS TRUSTEE FOR
WELLS FARGO ASSET SECURITIES
CORPORATION, MORTGAGE
PASS-THROUGH CERTIFICATES
SERIES 2006-8**

Defendants.

MOTION TO DEEM
ADMISSIONS OF FACT
ADMITTED AND TO DEEM
DOCUMENTS NON-
CONFIDENTIAL AND MOTION
TO REOPEN DISCOVERY

-----X

MOTION TO DEEM ADMISSIONS OF FACT “ADMITTED”
AND TO DEEM DOCUMENT NON-CONFIDENTIAL
AND MOTION TO REOPEN DISCOVERY

NOW COME Debtor / Movant Mr. Carlos Mota, by and through his attorney, Linda M. Tirelli as Of Counsel to David J. Babel, Esq., and moves the Court to deem Admissions of Fact to be admitted and to further deem the document claimed as confidential by counsel for Defendant to not be confidential. In support hereof, Plaintiff states and alleges as follows:

1. The instant adversary proceeding was initially filed as a contested matter via Objection to Proof of Claim filed in the base chapter 13 case as on December 8, 2010 (see Case No. 10-13989 ECF Doc. No. 18).
2. The Plaintiff /Debtor maintains that the note endorsement was altered between the first proof of claim filed and the amended proof of claim such that a blank endorsement was added, in an attempt to perfect an interest of the claimant post-petition. The Debtor/Plaintiff further contends that the assignment of mortgage and note signed by John Kennerty is a fraudulent document fabricated by Wells Fargo.
3. The parties conducted discovery in the contested matter including depositions and document production.
4. Pursuant to a scheduling order entered by the Hon. Judge Sean Lane on October 24, 2013, the Plaintiff/Debtor converted the contested matter to an adversary proceeding, serving both defendants, and discovery deadline was established as November 15, 2013.
5. To date there have been 4 depositions conducted as follows:
 - a. Herman John Kennerty, former Wells Fargo employee and signer of the assignment of mortgage at issue (transcript currently under protective order entered by Hon. John Waites, US Bankruptcy Judge, Dist. of SD pending Your Honor's decision as to admissibility);
 - b. Mary Ellen Brust, Wells Fargo 30(b)(6) witness;

- c. Paul Brown, Wells Fargo employee and affiant; and
 - d. Mr. Carlos Mota, Debtor
6. Less than a month after the close of discovery in the instant case, and before trial, in an unrelated case, In re America Sanchez 10-12490-shl, on or about December 5, 2013, counsel for Wells Fargo (not the same firm as that representing Wells Fargo in the instant Mota case) produced documents in a trial notebook to the court which were not previously provided to the undersigned. Included in the documents provided in the trial notebook, is what is best described as a “note endorsement order form” on Wells Fargo stationary ordering a post-petition endorsement from the Note Endorsement Team in 2012, more than 2 years after the 2010 proof of claim was filed. A copy of said order form is attached hereto as **Exhibit A**.
7. By way of background, the undersigned was retained to assist and consult in an unrelated contested matter In re America Sanchez 10-12490-shl. The gravamen of the objection to proof of claim filed by Debtor’s counsel in the America Sanchez case, involved a similar fact pattern to that in the instant case where a proof of claim was filed in 2010 by a Wells Fargo entity attaching an unendorsed note. After Debtor ‘s counsel sent a letter complaining about the lack of perfection and lack of standing she filed an Objection to Proof of Claim, and thereafter in discovery, an original note was produced together with an endorsement via an unattached purported allonge. Said endorsement in blank in the America Sanchez case is from the originator, “First Meridian Mortgage, A Limited Liability Company” which based

on information and belief did not exist at the time the proof of claim was filed on or about.

8. The parties settled the Sanchez case at the time of the evidentiary hearing on December 10, 2013 before any witness was called to testify. Said settlement is still in the process of being reduced to paper.
9. The undersigned served additional discovery requests on counsel for Wells Fargo related to the discovery of document which evidences a note endorsement team and process, something prior Wells Fargo witnesses, Mary Ellen Brust and Paul Brown lacked knowledge. Herman John Kennerty, the now former Wells Fargo employee testified about such a procedure while still employed by Wells Fargo in 2010 in an unrelated case and again in 2012 in the instant case after he was no longer employed at Defendant Wells Fargo. To date only a letter stating that there will be no response was received from Defendants' counsel. A copy of the discovery requests is attached as **Exhibit B**.
10. Sometime after serving the additional discovery requests, the undersigned received a copy of a 150 page document (hereinafter referred to as "Wells Fargo Attorney Procedure Manual") bearing the following caption:

**Wells Fargo Home Mortgage Foreclosure
Attorney Procedure Manual, Version 1**
Status: Revision 3
Origination Date: 11/09/2011
Date Last Published: 02/24/2012
11. The court should know that the undersigned received the "Wells Fargo Attorney Procedure Manual" from a colleague in North Carolina who received the document

from another colleague in Florida who explained to the undersigned that he found the document on the internet available to the general public.

12. In an effort to authenticate the document, the undersigned attached the same to a Request for Admissions of Fact and served the same on opposing counsel. A copy of the Request for Admissions of Fact are attached hereto as **Exhibit C**, however for reasons stated below, a copy of the Wells Fargo Attorney Procedures Manual is omitted for an in-camera review.
13. By letter dated March 7, 2014, counsel for Wells Fargo responded to the additional document requests and the Requests for Admissions in one letter. Through opposing counsel, Wells Fargo refused to admit or deny the admissions of fact , instead claiming the Wells Fargo Attorney Procedure Manual (which was found on the internet) to be “confidential” and “privileged”. The Plaintiff maintains that the document is neither confidential nor privileged if it is available on the internet to the general public. Copy of the Wells Fargo response is attached here as **Exhibit D**.
14. As the undersigned understands the contents of the Wells Fargo Attorney Procedure Manual, specific procedures are spelled out for obtaining, creating, and otherwise fabricating endorsements, allonges, affidavits, and assignments for the purpose of creating the illusion of an actual chain of title to be used in submissions to courts of law. Notably there are other procedures including training witnesses. Such procedures are suspected of being used in the instant case in an attempt to entice the court’s reliance on false documents.
15. While the dates on the manual appear to be after the proofs of claim were filed in this case, the testimony of Herman John Kennerty taken in May 2010, prior to the

- proof of claim filed in the instant case describe a note endorsement procedure similar to that described in the Attorney Procedure Manual. Attached please find the deposition transcript of Herman John Kennerty while he was still employed with Wells Fargo attached as **Exhibit E**. Testimony regarding the note endorsement procedure is located on page 56.¹ Testimony regarding his own robo signing of documents at the rate of 50-100 per day is located on pages 8-9.
16. Had the undersigned not happened upon the Note Endorsement Team Order Form and the Wells Fargo Attorney Procedure Manual, she would not have known for certain that such procedures and forms exist so as to request the same in discovery. Given the similar dates and document conditions in the Sanchez case as with the instant case, it seems entirely possible the endorsement is in fact post-petition attempt to cure the defect in the note endorsement. Furthermore, the assignment of mortgage is indeed a bogus document as alleged by the Plaintiff in his claim of Fraud on The Court.
17. The Plaintiff/Debtor moves this court to reopen discovery to allow the Plaintiff additional discovery regarding the Wells Fargo Attorney Procedure Manual and the Note Endorsement Team Order Form Motion to Reopen Discovery for the purpose of taking a deposition of a person with knowledge to testify as to the existence of the Note Endorsement Team and any and all procedures in place at Wells Fargo for endorsing notes and creating assignments at the time of the filing of the proof of claim in the instant case and any and all communications pertaining to such procedures and activities.

¹ It is worth noting for the court that in the same 2010 deposition, Mr. Kennerty testified that he was signing between 50 and 100 documents per day. The plaintiff/debtor maintains that Mr. Kennerty at the time of his employment with Wells Fargo acted in a manner now known as a "robo signer".

18. While the Plaintiff did craft discovery requests after receiving the Note Endorsement Team Order Form, she did not yet craft discovery requests or deposition notices pertaining to the attorney Procedure Manual or the communications between the attorneys and the “Wells Fargo Liaison” as mentioned in said manual.
19. The {plaintiff had no prior knowledge of such written instructions/procedures at Wells Fargo and came into both the Note Endorsement Team Order Form and the Wells Fargo Attorney Procedure Manual on pure happen stance and by surprise.
20. The Plaintiff avers that the additional discovery will be pertinent to the case and helpful to the trier of fact at trial.
21. This court should also know that in another unrelated case pending before the Honorable Judge Drain, In re Cynthia Franklin 10-20010(rdd), the Court permitted the undersigned to file a similar motion, asking that discovery be reopened *post-trial* based on the discovery f both the Note Endorsement Team Order Form and the Wells Fargo Attorney Procedure Manual. In Franklin, the Court conducted an evidentiary hearing on or about December 3, 2013 only 2 days prior to the undersigned obtaining the Note Endorsement Team Order Form. Franklin, line the instant Mota case, is a 2010 Chapter 10 bankruptcy case with both a John Kennerty assignment and a note with deficient endorsements filed with the court attached to a Proof of Claim by Wells Fargo.
22. Your Honor should also know that on March 1, 2012 at Summary Judgment, Judge Drain determined the John Kennerty Assignment of Mortgage submitted in the Franklin case to be a “fraudulent document”. Judge Drain also deemed Mary Ellen Brust to be incompetent as a witness lacking personal knowledge. A copy of the

transcript of the Summary Judgment proceeding in Franklin is available in the court's ECF system (see Case No. 10-20010 ECF Doc. No. 77 Pgs 30-32 and Pgs. 59-61).

23. It follows that as with Franklin, Wells Fargo n the instant case is simply not credible and additional discovery is warranted in light of the newly discovered documents.

WHEREAS, For all the reasons set forth above, the Movant respectfully moves this court to

1. Grant its motion and deem the Requests for Admissions as "Admitted"; and
2. Grant its motion and deem the "Wells Fargo Attorney Procedural Manual" to be non-confidential; and
3. Grant its motion and reopen discovery; and
4. Grant it such other relief the court deems just and proper.

Respectfully Submitted,

This the 25th Day of March, 2014.

____/s/ Linda M. Tirelli_____
Linda M. Tirelli, Esq.,
Counsel for the Debtor
Garvey Tirelli & Cushner, Ltd.
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CERTIFICATE OF SERVICE

Linda M. Tirelli, attorney for the debtor, hereby certifies to the Court as follows:

1. I am not a party for the foregoing proceeding;
2. I am not less than 18 years of age;
3. I have this day served a copy of the foregoing

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“Motion To Deem Admissions Of Fact ‘Admitted’ and To Deem Document Non-Confidential and Motion To Reopen Discovery”

“Notice of Hearing”

on all parties in interest by placing the same in an envelope, first-class mail, postage prepaid, addressed to each person at his dwelling house or usual place of abode or to the place where he regularly conducts his business or profession as follows:

David J. Babel, Esq.
2525 Eastchester Road
Bronx, NY 10469

Carlos R Mota
2564 Pearsall Avenue
Bronx, NY 10469

Nicole E. Schiavo, Esq.
David Dunn, Esq.
Hogan Lovells US LLP
875 Third Avenue
New York, NY 10022

Jeffrey Sapir, Esq.
Chapter 13 Trustee
399 Knollwood Road
White Plains, NY 10603

United States Department of Justice
Office of United States Trustee
Southern District of New York
Attn: Attorney Greg Zipes, and
Attorney Andy Velez-Rivera
201 Varick St. / Suite 1006
New York, NY 10014

4. To the best of my knowledge, information and belief, the parties in interest are not infants or incompetent persons;

5. Service as outlined herein was made within the United States of America.

This the 25th Day of March 2014.

 /S/ Linda M. Tirelli
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