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UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA - SANTA ANA

--oOo--

In Re:	)	Case No. 8:11-bk-19563-ES
	)	
TRUDY KALUSH,	)	Chapter 11
	)	
Debtor,	)	Santa Ana, California
	)	November 27, 2013
-----X	)	Wednesday, 11:30 A.M.
KALUSH	)	
	)	
Plaintiff,	)	
	)	
v.	)	8:12-ap-01206-ES
	)	
DEUTSCHE BANK NATIONAL TRUST	)	
COMPANY, as Trustee of the	)	
INDYMAC INDEX Deed of Trust	)	
Loan Trust 2006-AR12, et al.,	)	
	)	
Defendant.	)	
-----X	)	

Oral Ruling Hearing RE:  
Amended defendants' motion  
for summary judgment or,  
in the alternative, motion  
for partial summary  
adjudication

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE ERITHE SMITH  
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtor:	ROBERT P. GOE, ESQ.
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1        SANTA ANA, CALIFORNIA, WEDNESDAY, NOVEMBER 27, 2013,

2                                12:12 P.M.

3                                --oOo--

4                THE CLERK: Please rise and come to order. This  
5 United States Bankruptcy Court is now in session, the  
6 Honorable Erithe Smith, Bankruptcy Judge, presiding.  
7 Please be seated.

8                THE COURT: All right. In the matter of Kalush  
9 versus Deutsche Bank National Trust Company, I'll take the  
10 courtroom appearance first.

11               MS. RHIM: Good afternoon, Your Honor. Alexandra  
12 Rhim of Dykema Gossett on behalf of Ocwen Loan Servicing,  
13 which is the successor of servicer.

14               MR. GOE: Yes. Good afternoon, Your Honor.  
15 Robert Goe, Goe & Forsythe on behalf of the debtor. Your  
16 Honor?

17               THE COURT: Yes.

18               MR. GOE: Would it be okay if since my client is  
19 sitting here in my room -- conference room, is it okay if  
20 we listen in by speaker phone to your decision?

21               THE COURT: Well, only if I can still hear you if  
22 I have any questions because speaker phone doesn't tend to  
23 work very well.

24               MR. GOE: Okay. I'll pick it up if you have a  
25 question.

1 THE COURT: All right.

2 MR. GOE: Thank you.

3 THE COURT: First of all, there's some  
4 housekeeping matters I want to take care of. At the  
5 conclusion of the hearing on November 5 I indicated that I  
6 was taking the matter under submission. I do not have in  
7 my notes that any party requested permission to file  
8 additional documents; nevertheless, there were additional  
9 documents filed by -- is it Ocwen now?

10 MS. RHIM: Yes, Your Honor.

11 THE COURT: I referred to this as the defendants,  
12 so I'll just say defendants. There was a declaration of  
13 Alexandra Rhim filed on November 22nd as docket number 63  
14 and the declaration of Rinaldo Reyes (phonetic) filed also  
15 on November 22nd as docket number 64. During the course of  
16 reviewing the pleadings, I happened to look at the docket  
17 and noticed that these docu -- these declarations have been  
18 filed after the matter was taken under submission. I had  
19 my law clerk contact plaintiff's counsel to find out if  
20 plaintiff intended to file any objections. Objections were  
21 filed at some point yesterday or this morning.

22 In any event, I have decided that because there  
23 was no request made to file additional briefing, no  
24 additional briefing was authorized, that I would not take  
25 into account or consider the declarations that were filed

1 on November 22nd and, therefore, there was no need to  
2 review or consider the plaintiff's response that was filed  
3 on November 26. So the ruling today will be based upon the  
4 briefs and pleadings and arguments that were presented as  
5 of November 5 when the matter was taken under submission.

6 I'll start by giving you all the short answer on  
7 this. With respect to the defendants' motion, the motion  
8 is granted in part, denied in part. It is granted as to  
9 the second, fourth and seventh claims for relief. The  
10 plaintiff's motion is denied in its entirety. Ultimately,  
11 I found that there were triable issues of material fact  
12 that prevented me from granting the plaintiff's motion for  
13 partial adjudication and also from granting the defendants'  
14 motion except as to the second, fourth and seventh claims.

15 I'm not going to go through all of the facts  
16 because there are a lot of them. I'll just state the basic  
17 facts that on January 20, 2005 the plaintiff signed a  
18 promissory note in the amount of \$1,725,500 payable to  
19 Commercial Capital Bank and on the same day plaintiff also  
20 signed the deed of trust encumbering the property known as  
21 16625 South Pacific Coast Highway, Sunset Beach, California  
22 as security for the promissory note. At least these facts  
23 are not in dispute.

24 According to the defendants, on March 16, 2005,  
25 Commercial executed an endorsement to promissory note

1 assigning the note and deed of trust to IndyMac Bank FSB  
2 and stating that the note was "attached" to the deed of  
3 trust. Also, according to defendants the endorsement was  
4 physically stapled to the note. Defendants also assert  
5 that the endorsement includes a second endorsement payable  
6 in blank by INB. Plaintiff disputes these facts.

7 I may discuss other facts as I address each of  
8 the claims here. Starting with the defendants' motion,  
9 fourth claim for relief quasi-contract, the complaint fails  
10 to state a claim based on quasi-contract as such a claim  
11 does not lie where there's an existing binding agreement or  
12 contract. And I would refer to and adopt plaintiff's  
13 motion for summary judgment at page 16, lines 21 to 24.

14 Moreover, plaintiff does not offer any argument  
15 or evidence as to the fourth claim for relief in her  
16 opposition to the defendants' motion. Accordingly,  
17 defendants are entitled to summary adjudication of this  
18 claim in their favor.

19 I need to back up just a little bit here.

20 (Pause)

21 I have to take a short break because I realize  
22 that I forgot -- I forgot one document that I need for the  
23 rulings, so hold on just a minute. You can just stay on  
24 the record. I'll be right back.

25 (Pause)

1           Okay. We're back on. I apologize for the break.  
2 I had made some note on my computer, forgot to print them  
3 out, and couldn't really tell my law clerk exactly where to  
4 look for it, so I had to go find it myself.

5           I want to back up a little bit because before I  
6 got into discussing the specific claims I didn't mention  
7 the standard that would be applied here, so I'll just state  
8 it for the record. I think the parties already know what  
9 the standard is for summary judgment but I'll just state it  
10 for the record.

11           "Summary judgment is appropriate when the moving  
12 party demonstrates that there is no genuine issue as  
13 to material fact and that the moving party is entitled  
14 to judgment as a matter of law."  
15 This is from the Federal Rules of Civil Procedure 56(c).

16           "Thus, when addressing a motion for summary  
17 judgment the court must decide whether there exists  
18 any genuine factual issues that properly can be  
19 resolved only by a finder of fact because they may  
20 reasonably be resolved in favor of either party. The  
21 court should not grant summary judgment unless the  
22 pleadings and supporting documents when viewed in the  
23 light most favorable to the non-moving party show that  
24 there's no genuine issue as to any material fact and  
25 that the moving party is entitled to judgment as a

1 matter of law. Once the movant carries this burden,  
2 the burden shifts to the non-movant to show that  
3 summary judgment should not be granted. The party  
4 opposing a properly-supported motion for summary  
5 judgment must set forth specific facts showing the  
6 existence of a genuine issue concerning every  
7 essential component of its case."

8 Now then, I had skipped to the fourth claim for  
9 relief, which is quasi-contract, I believe. I think I  
10 already addressed that.

11 I want to mention -- I didn't say that I was  
12 granting summary adjudication or partial adjudication in  
13 favor of the defendants on the fifth claim of relief, which  
14 is TELA, but I do want to comment on that because it may  
15 narrow the issues for trial with respect to the TELA claim.

16 The defendants assert that this claim is time  
17 barred. An action for damages under 15 U.S.C. 1641(g) must  
18 be brought within one year of the date of the occurrence of  
19 the violation. The relevant transaction in this case would  
20 be the transfer of the interest in the loan. Plaintiff  
21 argues that:

22 "Deutsche admits that it was allegedly assigned  
23 the ownership interest in the loan by the June 12,  
24 2013 assignment of the deed of trust."

25 And I just want to point that this is incorrect and this is



1 an incorrect statement of the law. The deed of trust does  
2 not itself create an interest in the loan; it secures the  
3 loan. The loan or legal obligation is created by the  
4 execution of the promissory note.

5 Defendants contend that the interest or ownership  
6 in the loan that is the note was transferred on June 1,  
7 2005, through the PSA. If, in fact, the note was  
8 transferred in 2005, the TELA claim would be time-barred as  
9 a matter of law. In other words, the Court does not look  
10 to the assignment of the deed of trust. That is not the  
11 operative transfer; it would be the transfer of the note  
12 itself. And I'll come back to that issue in a moment.

13 The seventh claim for relief is California  
14 Business and Professions Code 17200. Court agrees with  
15 defendants that this California statute is preempted by the  
16 Homeowner's Loan Act of 1933. The citation is *Silvas v.*  
17 *E\*Trade Mortgage Corp*, 514 F.3d 1001, 1006 (Ninth Circuit  
18 2008). Moreover, plaintiff did not offer any argument or  
19 evidence in her opposition as to this claim for relief and  
20 accordingly, defendants are entitled to summary  
21 adjudication in their favor as to the seventh claim for  
22 relief.

23 And I also did mention the second claim for  
24 relief, California Penal Code 470. Regarding the second  
25 claim for relief plaintiff asserts a claim for which no

1 remedy can be granted by this court. California Penal Code  
2 470 is a criminal statute. Plaintiff cannot seek  
3 enforcement of a criminal statute in a civil proceeding.  
4 The Court further notes that in her opposition to the  
5 defendants' summary judgment motion plaintiff does not  
6 offer any argument or evidence in opposition to the second  
7 claim for relief. Defendants are entitled to summary  
8 adjudication as to this claim in their favor.

9           Something else I wish to address is the matter of  
10 standing. The plaintiff -- excuse me -- to assert the  
11 validity of -- is it appropriate to say Deutsche Bank's  
12 interest?

13           MS. RHIM: Yes, Your Honor.

14           THE COURT: Okay. Because you only said you're  
15 representing Ocwen, so --

16           MS. RHIM: Ocwen is acting as the servicer --

17           THE COURT: I see.

18           MS. RHIM: -- obligated to defend Deutsche Bank  
19 with respect to enforcement of this loan obligation.

20           THE COURT: Okay. Regarding standing of  
21 plaintiff to assert the invalidity of Deutsche Bank's  
22 interests due to alleged non-compliance with the PSA,  
23 plaintiff relies primarily on the decision of California  
24 Appellate Court in support of its position -- excuse me --  
25 that Deutsche Bank's interests in the loan and the deed of

1 trust are invalid because the deed of trust was not  
2 assigned to Deutsche Bank until after the closing of the  
3 PSA. The decision cited most heavily is *Glasky v. Bank of*  
4 *America*, 218 Cal. App. 4th 1079.

5 *Glasky* is neither binding on this Court nor  
6 persuasive in its holding. The Court notes that *Glasky*  
7 represents a tiny minority of cases that hold that the  
8 borrower has standing to challenge the validity of the  
9 secured creditor's interest in the loan based on  
10 noncompliance with securitized pooling and servicing  
11 agreements.

12 I'd note first that *Glasky* is distinguishable on  
13 its facts. In that case neither the note or the deed of  
14 trust was transferred prior to the closing of the PSA. In  
15 this case, the note if it was transferred was transferred  
16 in 2005 prior to the closing. It is the note that creates  
17 the obligation. The deed of trust follows the note.

18 Further, *Glasky* has been heavily criticized and  
19 the Court is not aware of a single case that affirmatively  
20 follows its ruling. This Court agrees with the  
21 overwhelming majority of cases including the majority of  
22 District Courts in California who have held that borrowers  
23 do not have standing to challenge the assignment of a loan  
24 because borrowers are not a party to the assignment  
25 agreement.

1           Citing here *Dick v. American Home Mortgage*  
2 *Servicing*, 2013 case -- or rather, 2013 Westlaw 5299180,  
3 Eastern District of California 2013, declining to follow  
4 *Glasky*; also, *Dahnken*, D-A-H-N-K-E-N, v. *Wells Fargo Bank*,  
5 213 Westlaw 5979356, Northern District of California  
6 November 8, 2013. "Following the majority position the  
7 plaintiff lacks standing to challenge noncompliance with  
8 PSA and securitization unless they are parties to the PSA  
9 or third-party beneficiaries of the PSA." Also,  
10 *Shkolnikov*, that's S-H-K-O-L-N-I-K-O-V, v. *JPMorgan Chase*,  
11 2012 Westlaw 6553988 Northern District of California 2012.

12           Accordingly, the Court finds -- does make a  
13 finding that plaintiff is not -- does not have standing to  
14 challenge the validity of Deutsche Bank's claim on the  
15 basis of non-compliance with the PSA.

16           I also want to comment on the arguments regarding  
17 the proof of claim. Court notes as a preliminary matter  
18 that defendants referred to "an amended proof of claim" in  
19 various other pleadings filed in connection with their  
20 motion and the plaintiff's summary judgment motion.  
21 However, the Court could not find any record of in the  
22 claims register of an amended proof of claim having been  
23 filed in the case. The Court assumes, therefore, that no  
24 amended claim has been filed.

25           The Court notes that a timely filed proof of

1 claim is deemed allowed when filed and constitutes *prima*  
2 *facie* evidence of the validity and the amount of the claim  
3 under Section 502(a). Also citing Federal Rules of  
4 Bankruptcy Procedure 3001(f) and *In Re: Lundell* at 223 F.3d  
5 1035 (Ninth Circuit 2000).

6 "A party objecting to a claim must present  
7 affirmative evidence to overcome the presumption of  
8 its validity by showing facts tending to defeat the  
9 claim by probative force equal to that of the  
10 allegations of the proof of claim. If the objector  
11 produces sufficient evidence to negate one or more of  
12 the sworn facts in the proof of claim, the burden then  
13 reverts to the claimant to prove the validity of the  
14 claim by a preponderance of the evidence. The  
15 ultimate burden of persuasion remains at all times  
16 upon the claimant."

17 This is taken from the *Lundell* case as well as *In Re: Holm*,  
18 913 F.2d 620 (Fifth Circuit 1991).

19 I mention all this because one of the arguments  
20 of the plaintiff is that the proof of claim included a copy  
21 of the note but did not include any endorsement or allonge.  
22 And I just want to be clear that the filing of the proof of  
23 claim without the endorsement or allonge is not itself a  
24 sufficient basis to declare the claim disallowed. And I  
25 just want to stop -- put on the record a ruling or quote

1 taken from the Ninth Circuit BAP in *In Re: Heath*, 331  
2 Bankruptcy Reporter, 421 Ninth Circuit BAP 2005. "Section  
3 501 provides that a creditor or an indentured trustee may  
4 file a proof of claim." Section 502(a) states that "A  
5 claim filed under Section 501 is deemed allowed unless an  
6 objection is made," citing 11 U.S.C. 502(a). 501 is  
7 deemed -- this is Section 502(b) states that:

8 "If an objection to a claim is made then the  
9 Court shall determine the amount of such claim and  
10 shall allow such claim except to the extent that one  
11 of the limited grounds for disallowance is  
12 established. Non-compliance with 3001(c) is not one  
13 of the statutory grounds for disallowance."

14 And this is taken from *In Re: Heath*.

15 Similarly, in *In Re: Campbell* at 336 B.R. 430,  
16 436, (Ninth Circuit 2005), the BAP held that:

17 "A creditor who files a proof of claim that lacks  
18 sufficient support under Rule 3001(c) and (f) does so  
19 at its own risk. That proof of claim will lack *prima*  
20 *facie* validity, so any objection that raises a legal  
21 or factual ground to disallow the claim will likely  
22 prevail absent an adequate response by the creditor."

23 Citing its earlier decision in *Heath*, the BAP in  
24 *Campbell* further emphasized that "Debtors filed objections  
25 that relied solely on alleged lack of *prima facie* validity

1 of the proofs of claim." This is not sufficient objection  
2 recognized by Section 502 which deems claims allowed and  
3 directs that the Bankruptcy Court shall allow claims with  
4 limited exceptions that are not alleged by debtors.

5 In this case plaintiff contends that the proof of  
6 claim filed by defendants did not include the allonge or  
7 endorsement. This is true, but it is not determinative of  
8 whether the proof of claim will ultimately be allowed.

9 I also want to make a comment about the JPMorgan  
10 Chase assignment. This has been sort of the floating  
11 assignment out there that does not reference a note, that  
12 does purport to assign the deed of trust from JPMorgan  
13 Chase. I will just note that based on the evidence  
14 presented, there's no evidence that JPMorgan ever owned,  
15 held or had an interest in the note itself, a deed of trust  
16 without the notice of no consequence as the deed of trust  
17 follows the note and not the reverse.

18 I apologize to the parties if I'm jumping around  
19 a little bit.

20 There were evidentiary objections filed to the  
21 declarations of Charles Boyle and Rinaldo Reyes. With  
22 respect to the declaration of Charles Boyle there's an  
23 objection to paragraph 2 relating to the authority of  
24 Mr. Boyle to make the declaration. This objection is  
25 overruled.

1           With respect to paragraph 4 that begins, "I am  
2 informed and believe that the records obtained from FDIC  
3 were made by CCB in the ordinary course of business," et  
4 cetera. This objection is sustained on the basis of  
5 personal knowledge and foundation.

6           The objection to paragraph 6 -- okay, just a  
7 moment -- yes, paragraph 6. This objection is overruled.

8           With respect to paragraph 7, the objection is  
9 sustained on the basis of personal knowledge, foundation.

10          With respect to paragraph 8, this paragraph -- I  
11 mean, this objection is overruled for the following  
12 reasons. Plaintiff objects to four separate statements  
13 with substantial content on seven evidentiary grounds. The  
14 Court declines to try to discern which objection relates to  
15 which particular statement or portion of a statement.  
16 There's just too many objections and too many facts and too  
17 many statements that I cannot play connect-the-dots.  
18 That's not my job. It is the job of the objecting party to  
19 be clear about the evidentiary objection as to each factual  
20 statement and, therefore, for that reason due to the  
21 vagueness of the objection, the objection is overruled.

22          With respect to the evidentiary objections to the  
23 declaration of Rinaldo Reyes --

24           (Cell phone rings.)

25          MS. RHIM: My apologies, Your Honor.



1 THE COURT: The objection to paragraph 2, the  
2 objection is sustained.

3 (Cell phone rings.)

4 What about the off button?

5 MS. RHIM: Your Honor, I'm trying -- I'm trying.

6 THE COURT: Okay. With respect to paragraph 2 to  
7 the Reyes declaration, the objection is sustained.  
8 Paragraph 3, the objection is sustained; foundation.

9 The objection to paragraph 4, overruled. The  
10 objection to paragraph 5, overruled.

11 Where a negotiable instrument represents the  
12 obligation to be enforced, the issue whether the movant has  
13 a legal right to enforce the obligation and, thus, whether  
14 the movant has prudential standing as termed by the  
15 Commercial Code, *In Re: Jackson*, 451 B.R. 24 (Eastern  
16 District of California 2011), California Commercial Code  
17 3301 provides three ways for a person to be entitled to  
18 enforce the note: one where one is the holder of the  
19 instrument; where one is a non-holder in possession of the  
20 note who has the rights of a holder; or one is entitled to  
21 enforce the note but cannot reasonably obtain possession of  
22 the instrument because the instrument is destroyed.

23 "To qualify as a holder a party must be in  
24 possession of the instrument that is either properly  
25 endorsed or payable to the person in possession of it."

1           This is from *In Re: Zuletta* (phonetic), Ninth  
2 Circuit BAP 2011.

3           California Commercial Code 3301 provides that:

4           "Even though a person may be entitled to enforce  
5 the instrument even though the person is not the owner  
6 of the instrument or is in wrongful possession of the  
7 instrument."

8 This is also taken from the *Zuletta* case.

9           "An allonge to a promissory note need only (a)  
10 sufficiently identify the note including the loan  
11 number containing language showing that it without  
12 recourse pays to the order of a payee or in blank and  
13 is affixed or attached to the note."

14 Also from the *Zuletta* case.

15           "California courts have held that a promissory  
16 note may be negotiated by an endorsement on the note  
17 or by separate allonge attached to the note and  
18 containing an endorsement."

19 *Lopez v. Puzena*, 239 Cal. App. 2d 708.

20           "The general rule followed by most jurisdictions  
21 including California said that an endorsement must be  
22 written on the instrument itself or on a paper  
23 attached or annexed thereto in order to effectively  
24 charge one with the liability of an endorser or to  
25 give rise to an endorsee."

1 Also taken from the *Lopez v. Puzena* case.

2           In this case, as far as the note is concerned, as  
3 I indicated before the evidence would tend to show that if  
4 a transfer of the subject note occurred, it would have  
5 occurred in 2005 through the PSA -- the 2005 PSA. At this  
6 point there is a factual issue with respect to whether the  
7 note transferred on June 1, 2005 as part of the PSA. And  
8 part of the reason why this is a factual issue is because  
9 one of the statements in the declaration of Mr. Reyes that  
10 was sustained had to do with the loan transaction. I  
11 reviewed those documents very carefully and based on not  
12 taking into account any documents that are filed after  
13 November 5, 2013, the exhibit attached to Mr. Reyes's  
14 declaration that purports to show the loan of Ms. Kalush  
15 does not identify the loan by name. What's identified as a  
16 loan number is not the loan number that appears on the deed  
17 of trust. The loan number on that document does match a  
18 handwritten number that appears on one of the deeds of  
19 trust; however, there was no evidence as to who or under  
20 what circumstances that number was handwritten onto the  
21 deed of trust.

22           So I believe there's a factual issue there that  
23 would need to be resolved regarding the identification of  
24 the loan as being a loan that was transferred pursuant to  
25 the PSA. And this -- the transfer of the note under the

1 PSA is critical because this is what creates the obligation  
2 and the interest in the loan itself. As far as the -- and  
3 again, if, in fact, the transfer of the note was proper and  
4 is identifiable, then the transfer would have taken place  
5 in 2005 before the closing of the PSA.

6 And again, to narrow the issues for trial, the  
7 Court also finds that the transfer of the deed of trust  
8 after the closing of the PSA does not render -- would not  
9 render Deutsche's interest in the loan invalid, nor would  
10 it of itself render the deed of trust itself unenforceable.

11 With respect to any issues relating to the  
12 assignment of the deed of trust and the chain of the  
13 assignment, I leave that as a matter that will be  
14 determined at trial. So to be clear that my decision today  
15 is based on the pleadings that were presented to the Court  
16 taking into account and not considering any declaratory  
17 statements for which evidentiary objections were sustained.

18 For the same reasons that the Court finds that  
19 there were triable issues with respect to the transfer of  
20 the note, the Court is unable to grant the plaintiff's  
21 motion for partial adjudication either on the basis of the  
22 proof of claim for the reasons stated on the record or on  
23 the basis of non-compliance with the PSA for the reasons  
24 stated on the record.

25 And again, I want to be clear here because the

1 plaintiffs have several times -- for example, on page 4 of  
2 the motion "Debtor" -- this is the caption -- "Debtor's  
3 note and deed of trust was not transferred to the trust"  
4 and then the text says:

5 "Deutsche Bank filed Reyes declaration to support  
6 ownership of the loan through the trust and PSA.

7 Remarkably, Reyes admits that Deutsche trust did not  
8 receive the debtor's deed of trust until May 3, 2012."

9 And I just want to be clear here, so that we  
10 don't have to go over this again at trial, that it is not  
11 the transfer of the deed of trust that creates ownership of  
12 the loan; it is the transfer of the note that creates  
13 ownership of the loan. So -- just so we're clear on that.  
14 As I've said before, the Court chooses not to follow *Glasky*  
15 and I believe there are trialable issues of fact with  
16 respect to the assignment of the deed of trust that will  
17 need to be addressed at trial.

18 One other thing I want to note in that in the  
19 defendant's motion the argument is made that evidence has  
20 been presented to show that the allonge was attached to the  
21 note. I cannot make that determination from a photocopy,  
22 so I cannot make a finding in that respect and that does  
23 create an issue.

24 Also, with respect to the plaintiff's argument  
25 that a checklist that was prepared checks no -- or not

1 applicable with respect to the allonge. I make no finding  
2 that that means that the allonge was not there and the  
3 reason is that the box above that reads "endorsement" and  
4 that box is checked "yes."

5           So to the extent that the plaintiff's motion  
6 would seek a determination that that document alone  
7 establishes that there was no endorsement, I'd just note  
8 that an allongement -- an allonge is a separate document  
9 that includes an endorsement. So I think that there is --  
10 there's a factual issue there as to I don't know what the  
11 person was thinking when they checked "yes" for endorsement  
12 and non-applicable for allonge. I could speculate that  
13 they believe that there was an endorsement and, therefore,  
14 no need to check the allonge box, maybe not understanding  
15 that the separate document itself, the fact that there's a  
16 separate document constitutes an allonge. I don't want to  
17 speculate on that. Therefore, it is a factual issue that  
18 will need to be determined at trial.

19           And I also want to just address one other matter  
20 that was raised by the plaintiff at the oral argument  
21 regarding the *Wiseband* (phonetic) case. This is from the  
22 Bankruptcy Court from Arizona, 427 Bankruptcy Reporter 13,  
23 citing Arizona law. I just note that the procedural  
24 posture of that case was a little different. I'm reviewing  
25 this matter on a summary judgment. In the *Wiseband* case

1 there had been an evidentiary hearing, so it appears that  
2 Judge Hollowell had an opportunity to review documents in  
3 connection with an evidentiary hearing. That's not the  
4 case here. This is a motion for summary judgment, so the  
5 standard is going to be somewhat different. At this point  
6 I cannot make a determination as to whether the allonge was  
7 or was not attached.

8           So for those reasons, the plaintiff's motion for  
9 partial adjudication will be denied. The defendant's  
10 motion is granted as to the second, fourth and seventh  
11 claims for relief. To the extent that I have made findings  
12 on the record as to specific matters, those will be  
13 considered, I guess, factual findings as part of summary  
14 judgment and will be considered part of my ruling with  
15 respect to these motions for summary judgment.

16           Are there any questions? I'll start with  
17 Ms. Rhim who's in the courtroom.

18           MS. RHIM: Your Honor, I don't have any  
19 questions.

20           THE COURT: Mr. Goe?

21           MR. GOE: No, Your Honor.

22           THE COURT: All right. I don't know if we had --  
23 let's see -- yes, we did. We did have continued pretrial  
24 set for today, so I think it would be appropriate to reset  
25 the pretrial conference so that the parties can prepare a

1 pretrial stipulation that is consistent with my ruling  
2 today and obviously excludes some issues.

3 My suggestion would be, although it sounds like a  
4 long way off, January 30 only because trying to set  
5 pretrials in January is always difficult because the two  
6 weeks tend to back up into the holiday break. So if we set  
7 it for January 30, then the pretrial stipulation would not  
8 be due until January 16, which would be a couple of weeks  
9 after. Does that work for you, Mr. Goe?

10 MR. GOE: (No audible response.)

11 THE COURT: Mr. Goe?

12 COURTCALL OPERATOR: Your Honor?

13 THE COURT: Yes.

14 COURTCALL OPERATOR: This is the CourtCall  
15 operator. Mr. Goe has disconnected.

16 THE COURT: I think he tried to move his speaker  
17 to non-speaker and something must have happened. I assume  
18 he's going to call back.

19 COURTCALL OPERATOR: Yes. I will keep my eye  
20 out, Your Honor.

21 THE COURT: All right.

22 MS. RHIM: And, Your Honor, what time do you  
23 propose on --

24 THE COURT: 9:30.

25 MS. RHIM: -- January -- 9:30. Your Honor, I



1 hate to ask, but if it's possible for a later -- somewhat  
2 later in the day. The reason is, they're doing a whole  
3 bunch of construction on the 5. I live in LA County. I  
4 hope that's not the situation in January.

5 THE COURT: Well, I can't go past 10:30 because  
6 I've got a 2:00 o'clock loan matter calendar at 2:00.

7 MS. RHIM: 10:30 would still be better.

8 THE COURT: Okay. I'll have to make a special  
9 note because they will wonder why I'm setting a pretrial at  
10 10:30, but okay.

11 COURTCALL OPERATOR: Your Honor, this is the  
12 CourtCall operator. Robert Goe has connected.

13 THE COURT: Okay. Mr. Goe, were you there when I  
14 gave the date for the continued pretrial hearing?

15 MR. GOE: I'm sorry, Your Honor. I think it was  
16 my fault. I don't know. Did you say January 30th?

17 THE COURT: January 30, 2014. Mr. Rhim has  
18 requested to be put on the second part of the morning  
19 calendar 10:30, rather than 9:30.

20 MR. GOE: That's fine. January 30th at 10:30 and  
21 then the pretrial conference ordered the 16th, did you say?

22 THE COURT: Yes.

23 MR. GOE: Again, that's fine, Your Honor.

24 THE COURT: Okay. All right. I think that's it.

25 MR. GOE: Thank you, Your Honor.

1 THE COURT: Okay. You both have a wonderful  
2 Thanksgiving.

3 MS. RHIM: Thank you for your time on this, Your  
4 Honor.

5 THE COURT: Okay. Sorry for all the delay.

6 \* \* \* \* \*

7 I certify that the foregoing is a correct  
8 transcript from the electronic sound recording of the  
9 proceedings in the above-entitled matter.

10  
11 \_\_\_\_\_ Date: 1/2/2014  
12 RUTH ANN HAGER, C.E.T.\*\*D-641  
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