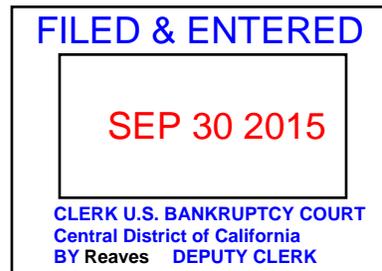


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**NOT FOR PUBLICATION**



**UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SAN FERNANDO VALLEY DIVISION**

In re:  
ALLANA BARONI,  
  
Debtor.

**Case No.: 1:12-bk-10986-MB**

**Chapter 11**

**Adv. Proc. No. 1:13-ap-01072-MB**

ALLANA BARONI,  
  
Plaintiff,  
  
vs.  
  
THE BANK OF NEW YORK MELLON  
FKA THE BANK OF NEW YORK, AS  
SUCCESSOR TRUSTEE TO JP  
MORGAN CHASE BANK, N.A., AS  
TRUSTEE FOR THE HOLDERS OF  
SAMI II TRUST 2006-AR6,  
MORTGAGE PASS THROUGH  
CERTIFICATES, SERIES 2006-AR6,  
  
Defendant.

**MEMORANDUM OF DECISION  
DENYING PLAINTIFF'S MOTION FOR  
LEAVE TO FILE SECOND AMENDED  
COMPLAINT [ADV. DKT. 61]**

Hearing

Date: May 6, 2015  
Time: 2:30 p.m.  
Place: Courtroom 303  
21041 Burbank Blvd  
Woodland Hills, CA 91367

1 **MEMORANDUM OF DECISION**

2 In this adversary proceeding, plaintiff Allana Baroni (“Baroni” or “Plaintiff”), a reorganized  
3 chapter 11 debtor, seeks leave to amend her First Amended Complaint and file a Second Amended  
4 Complaint (“SAC”) for the reasons stated in her *Motion for Leave to File Plaintiff’s Second*  
5 *Amended Complaint* (Adv. Dkt. 61, “Motion for Leave to Amend”) filed on March 16, 2015.  
6 Defendant Bank of New York Mellon f/k/a The Bank of New York, as Successor Trustee to JP  
7 Morgan Chase Bank, N.A., as Trustee for the Holders of SAMI II Trust 2006-AR6, Mortgage Pass  
8 Through Certificates, Series 2006-AR6 (“BONYM” or “Defendant”) opposed the Motion for  
9 Leave to Amend, which was heard on May 6, 2015, at 2:30 p.m. Louis J. Esbin and Michael Riley  
10 appeared on behalf of Plaintiff. Christopher R. Fredrich appeared on behalf of Defendant. Having  
11 considered the parties’ papers filed in support of and in opposition to the Motion for Leave to  
12 Amend, oral arguments as well as other pleadings and papers on file in this adversary proceeding,  
13 as well as the main bankruptcy case (the “Case”), Plaintiff’s Motion for Leave to Amend is denied.  
14 This Memorandum of Decision constitutes the Court’s findings of fact and conclusions of law  
15 pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

16 **I. FACTUAL AND PROCEDURAL BACKGROUND**

17 *The Bankruptcy Case*

18  
19  
20 Plaintiff Allana Baroni commenced this bankruptcy case on February 1, 2012. Case Dkt. 1.  
21 The case originally was filed under chapter 13 of the Bankruptcy Code, but subsequently was  
22 converted to chapter 11. Case Dkt. 10, 17. BONYM filed a proof of claim (the “POC”) on or  
23 about September 17, 2012, in an amount in excess of \$1.4 million, asserting a secured claim against  
24 Baroni and her real property located at 5390 Plata Rosa Court, Camarillo, California 93012 (the  
25 “Camarillo Property”). The POC identifies BONYM as the creditor, directs payments to be sent to  
26 Bank of America, N.A. (“BANA”) and directs notices to be sent to BANA. Baroni disputes the  
27 claim filed by BONYM, arguing that BONYM does not own, and otherwise is not entitled, to  
28

1 enforce the promissory note and deed of trust (the “Note” and “Deed of Trust”) on which the POC  
2 is premised.

3  
4 On April 15, 2013, the Court entered its order confirming Debtor’s Second Amended Plan  
5 of Reorganization. Case Dkt. 423. Baroni’s Second Amended Plan of Reorganization is combined  
6 in a single document with her Second Amended Disclosure Statement (collectively, the “Plan”) and  
7 was filed on March 20, 2013. Case Dkt. 376. In the course of trying to restructure the debts  
8 encumbering her various real properties, including the Camarillo Property, Baroni alleges that she  
9 discovered the lenders claiming an interest in her real properties engaged in loan securitization and  
10 pledged their position as first deed of trust lienholders into multiple income streams, fabricating  
11 notes and conveying them to numerous domestic and offshore trusts. By doing so, Baroni alleges  
12 that the lenders violated numerous state and federal statutes, as well as their common law duties to  
13 her. Baroni discloses and preserves potential causes of action arising from these allegations in  
14 Exhibit 2 to her Plan. With respect to the Camarillo Property, Exhibit 2 to her Plan expressly  
15 discloses that she has potential claims for [a] Violations of the Real Estate Settlement and  
16 Procedures Act (RESPA); 12 U.S.C. § 2601 *et seq.*, [b] Violations of the Truth-in-Lending Act  
17 (TILA) 15 U.S.C. § 1638, [c] Violations of the Fair Debt Collection Practices Act (FDCPA); 15  
18 U.S.C. § 1692 *et seq.*, [d] Violations of Fair Business and Profession Code, [e] Fraudulent  
19 Inducement, [f] Negligence, [g] Intentional Infliction of Emotional Distress, [h] Breach of  
20 Fiduciary Duties, [i] Slander of Title, [j] Common Law Fraud and [k] Unjust Enrichment against  
21 [1] Wells Fargo Bank, National Association, [2] Countrywide Home Loans Servicing L.P. and [3]  
22 “All Parties listed on Schedule D who are associated with this property, even if as ‘Notice Only.’”  
23 Plan, Exh. 2 at 000007. Plaintiff’s Amended Schedule D, in turn, identifies the secured creditor  
24 associated with the Camarillo Property as Bank of America Home Loans, L.P. Case Dkt. 19 at 20.  
25 The Plan contemplates, *inter alia*, that Baroni would file a post-confirmation adversary proceeding  
26 asserting her various causes of action regarding the Camarillo Property and disputing the POC filed  
27 by BONYM.  
28

1 On January 9, 2013, Baroni filed her *Motion Pursuant to Fed. R. Bankr. P. 2004 for the*  
2 *Production of Documents and the Oral Examination of the Person Designated by the Bank of New*  
3 *York Mellon fka the Bank of New York as Successor Trustee JP Morgan Chase Bank N.A. as*  
4 *Trustee for the Holders of SAMI II Trust 2006-AR6, Mortgage Passthrough Certificates Series*  
5 *2006-AR6 to Be Most Knowledgeable of the Topics Identified Herein* (the “BONYM 2004 Exam  
6 Motion), which was granted by the Court on January 15, 2013 (the “BONYM 2004 Exam Order”).  
7 Case Dkt. 252, 277. Pursuant to the BONYM 2004 Exam Order, BONYM was to produce certain  
8 documents related to its POC and the Camarillo Property by January 30, 2013, and to have its  
9 person most knowledgeable appear for examination on February 8, 2013. In her Motion for Leave  
10 to Amend, Baroni alleges that BONYM failed to appear for examination on February 8, 2013. To  
11 date, Baroni has not filed a motion to compel BONYM’s appearance or to otherwise compel  
12 BONYM to comply with the BONYM 2004 Exam Order.

13  
14 *The Adversary Proceeding*

15 On April 4, 2013, Baroni filed her complaint against BONYM (the “Complaint”),  
16 commencing this adversary proceeding. Adv. Dkt. 1. The Complaint alleges three claims for  
17 relief: [1] For a declaratory judgment disallowing the POC in its entirety, [2] for a declaratory  
18 judgment avoiding the lien in the Camarillo Property asserted in the POC, and [3] for restitution /  
19 unjust enrichment to recover all the loan payments by Baroni to BONYM. Thereafter Baroni and  
20 BONYM stipulated that Baroni could amend the Complaint and, on May 29, 2013, Baroni filed her  
21 First Amended Complaint (the “FAC”) against BONYM, which complaint included the original  
22 three claims for relief, as well as new claims for relief based on alleged violations of the Federal  
23 Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* and alleged violations of California’s  
24 Business and Professions Code § 17200 *et seq.* Adv. Dkt. 9.

25  
26 On January 21, 2014, the Court entered its Scheduling Order pursuant to Federal Rule of  
27 Civil Procedure 16(b) which established, *inter alia*, a cut-off date to amend pleadings and join  
28 parties. Adv. Dkt. 46. The deadlines in the original Scheduling Order were twice extended by

1 orders approving stipulations between Baroni and BONYM and the operative scheduling order  
2 (“Amended Scheduling Order”) established a final cut-off date of January 15, 2015, to amend the  
3 pleadings and to join parties. Adv. Dkt. 56. The Amended Scheduling Order also established  
4 March 13, 2015, as the last day for the parties to file pre-trial motions. On or about February 5,  
5 2015, Baroni requested that BONYM stipulate to Baroni filing a second amended complaint. That  
6 same date, BONYM declined to so stipulate.

7  
8 On March 13, 2015, BONYM timely filed its Motion for Summary Judgment (“MSJ”) on  
9 the FAC. Adv. Dkt. 58. Three days later, and fifty-six days after the deadline to join parties and  
10 amend the pleadings (and thirty-six days after BONYM refused to stipulate to Baroni filing a new  
11 amended complaint), Baroni filed her Motion for Leave to Amend. Baroni did not seek relief from  
12 the January 15, 2015, deadline established by the Amended Scheduling Order.

13 At the hearing on the Motion for Leave to Amend, counsel for Baroni acknowledged that,  
14 during the nearly two years that the adversary proceeding was pending prior to the filing of her  
15 Motion for Leave to Amend, Baroni had not propounded any discovery in the adversary proceeding  
16 pursuant to Rules 7026 – 7036 of the Federal Rules of Bankruptcy Procedure.

## 17 18 **II. ANALYSIS**

19 By her Motion for Leave to Amend, Baroni seeks permission to join four additional  
20 defendants – BANA, Wells Fargo Bank, N.A. (“Wells Fargo”), Structured Asset Mortgage  
21 Investments II, Inc. (“SAMI II, Inc.”) and Maiden Lane, LLC. Baroni also seeks permission to add  
22 three new claims for relief – slander of title, violations of California Civil Code §§ 1709, 1710 and  
23 for an accounting. Baroni contends that she should be allowed to file a SAC joining the new  
24 defendants and asserting the new claims for relief due to “significant factual and procedural  
25 developments” that she alleges have occurred since the filing of her FAC on May 29, 2013. Those  
26  
27  
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1 four allegedly new developments are: [1] that Nationstar Mortgage, LLC (“Nationstar”) filed a  
2 *Transfer of Claim* regarding the POC<sup>1</sup>; [2] that BONYM has allegedly admitted that the assignment  
3 of the Deed of Trust attached to the POC is “not true and correct;”<sup>2</sup> [3] that BONYM refused to  
4 appear at the February 18, 2013, Rule 2004 examination; and [4] that the documents produced by  
5 BONYM on June 5, 2014, in response to the BONYM 2004 Exam Order, do not demonstrate that  
6 BONYM is the current creditor under the POC. Motion for Leave to Amend, at 3:13-19, 5:22-24,  
7 6:12-16. In her *Response of Plaintiff, Allana Baroni, to Defendant the Bank of New York Mellon’s*  
8 *Opposition to Plaintiff’s Motion for Leave to File Second Amended Complaint* (the “Reply”), and  
9 at the hearing on the Motion for Leave to Amend, Baroni belatedly adds a fifth and six “new  
10 development,” specifically the Ninth Circuit Bankruptcy Appellate Panel’s decision in *Rivera v.*  
11 *Deutsche Bank Nat’l Trust Co. (In re Rivera)*, 2014 Bankr. LEXIS 4842, issued on November 24,  
12 2014 (the “Rivera Decision”) and the Supreme Court’s decision in *Jesinoski v. Countrywide Home*  
13 *Loans, Inc.*, 135 S.Ct. 790 (the “Jesinoski Decision”) issued on January 13, 2015. Adv. Dkt. 75 at  
14 4:15-24, 5:7-16.

15  
16 Baroni contends that Rule 15(a) of the Federal Rules of Civil Procedure governs her Motion  
17 for Leave to Amend and that leave to amend a pleading is to be granted with “extreme liberality.”  
18 *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 186 (9th Cir. 1987). Relying on *Shipner v.*  
19 *Eastern Air Lines, Inc.*, 868 F.2d 401, 406-07 (11th Cir. 1989), Baroni also contends that, because  
20 justice requires her proposed amendment, the burden shifts to BONYM to establish why justice  
21 requires denial of her Motion for Leave to Amend.

22  
23 <sup>1</sup> See *Transfer of Claim*, filed on April 28, 2014, attached as Exhibit 4 to the Motion for Leave to  
24 Amend. Case Dkt. 565. BONYM asserts this *Transfer of Claim* was filed to advise the Court and  
25 the parties that the servicer of BONYM’s loan had changed from Specialized Loan Servicing LLC  
26 to Nationstar and to provide a new address where Baroni was to direct payments. *Opposition of*  
*Defendant The Bank of New York Mellon to Plaintiff’s Motion for Leave to File Second Amended*  
*Complaint*. Adv. Dkt. 72 at 6:1-4.

27 <sup>2</sup> As detailed below, this alleged admission occurred during oral argument on August 7, 2013, on  
28 BONYM’s *Motion to Dismiss Plaintiff’s First Amended Adversary Complaint*. Adv. Dkt. 16.

1 Baroni's reliance on Rule 15(a), and liberal standards under that rule, are misplaced.  
2 Because the Amended Scheduling Order established January 15, 2015, as the last day to join  
3 parties and amend the pleadings, and because Baroni filed her Motion for Leave to Amend fifty-six  
4 days after that deadline had passed, Rule 15(a) does not govern Baroni's Motion for Leave to  
5 Amend. Once a trial court establishes a timetable for amending pleadings by entering a scheduling  
6 order pursuant to Federal Rule of Civil Procedure 16, the ability of a plaintiff to amend her  
7 complaint is "governed by Rule 16(b), not Rule 15(a)." *Johnson v. Mammoth Recreations, Inc.*,  
8 975 F.2d 604, 607-08 (9th Cir. 1992). "Unlike Rule 15(a)'s liberal amendment policy which  
9 focuses on the bad faith of the party seeking to interpose an amendment and the prejudice to the  
10 opposing party, Rule 16(b)'s 'good cause' standard primarily considers the diligence of the party  
11 seeking the amendment. . . if that party was not diligent, the inquiry should end." *In re Western*  
12 *States Wholesale Nat. Gas Antitrust Litig.*, 715 F.3d 716, 737 (9th Cir. 2013) quoting *Johnson*, 975  
13 F.2d at 609.

14  
15 In considering the diligence of the party seeking amendment, the Ninth Circuit has held that  
16 "carelessness is not compatible with a finding of diligence and offers no reason for relief."  
17 *Johnson*, 975 F.2d at 609. A plaintiff's failure to prosecute an action by propounding no discovery,  
18 failing to respond to discovery and failing to designate experts can demonstrate a lack of diligence  
19 and a lack of good cause under Rule 16(b). *Matrix Motor Co., Inc. v. Toyota Jidosha Kabushiki*  
20 *Kaisha*, 218 F.R.D. 667, 672 (C.D. Cal. 2003). Similarly, a party fails to demonstrate diligence  
21 when she belatedly seeks leave to amend to "assert new theories" when "the facts and the theory  
22 have been known to the party seeking amendment since the inception" of the case. *Acri v. Int'l*  
23 *Ass'n of Machinists & Aerospace Workers*, 781 F.2d 1393, 1398 (9th Cir. 1986); *Coleman v.*  
24 *Quaker Oats Co.*, 232 F.3d 1271, 1295 (9th Cir. 2000) (plaintiffs failed to show diligence required  
25 by Rule 16(b) where plaintiffs had expert's statistical report prior to previously-filed amended  
26 complaint and district court did not abuse its discretion in denying their motions to further amend  
27 to include allegations and theories based on statistical report); *Walker v. Benter*, 41 F.Supp. 2d  
28 1067, 1070-71 (C.D. Cal. 1999) (finding lack of diligence where some of the new allegations in the

1 proposed amended complaint were known to plaintiff prior to lawsuit and some were known to  
2 plaintiff long before the filing of the motion for leave to amend). By contrast, a party seeking to  
3 modify a scheduling order to amend the pleadings or join parties establishes good cause by  
4 showing that the deadline established by the scheduling order “cannot reasonably be met despite  
5 the diligence of the party seeking the extension.” *Johnson*, 975 F.2d at 609.

6  
7 A motion for leave to amend filed *after* an opposing party’s motion for summary judgment  
8 suggests the primary motivation for amendment is to defeat summary judgment and weighs against  
9 leave to amend as “[a] motion for leave to amend is not a vehicle to circumvent summary  
10 judgment.” *Schlacter - Jones v. Gen. Tel. of Cal.*, 936 F.2d 435, 443 (9th Cir. 1991) *overruled on*  
11 *another ground by Cramer v. Consol. Freightways, Inc.*, 255 F.3d 683 (9th Cir. 2001). *See also*  
12 *Walker*, 41 F.Supp 2d at 1071-72 (denying plaintiffs’ motion for leave to amend filed less than two  
13 weeks after filing of defendants’ motions for summary judgment); *Forty-Niner Sierra Res., Inc. v.*  
14 *Subaru of Am., Inc.*, 416 F. Supp. 2d 861, 870 (E.D. Cal. 2004) (denying plaintiff’s motion for  
15 leave to amend where plaintiff’s motion was filed 25 days after defendant’s motion for summary  
16 judgment).

17 As detailed below, Baroni has not demonstrated diligence and therefore good cause does  
18 not exist to modify the Amended Scheduling Order and grant her Motion for Leave to Amend. Her  
19 Motion for Leave to Amend is inexcusably late and her proposed SAC is based on facts known by,  
20 or available to, her long before she filed her Motion for Leave to Amend. The “newly discovered  
21 facts” on which her Motion for Leave to Amend is premised were known to Baroni anywhere from  
22 nine months to two years *before* she filed that motion. The oldest “newly discovered fact” is that  
23 BONYM did not attend the February 18, 2013, Rule 2004 examination – an omission that occurred  
24 more than two years before Baroni filed her Motion for Leave to Amend on March 16, 2015, and  
25 well before she filed either her original Complaint or her FAC. The Notice of Transfer of POC was  
26 filed by Nationstar on April 28, 2014, and served electronically on counsel for Baroni on that same  
27 date. Case Dkt. 565. The documents produced by BONYM which Baroni identifies as “newly  
28

1 discovered facts” were produced on June 5, 2014, to Baroni’s counsel. Motion for Leave to  
2 Amend, Decl. of Michael S. Riley, ¶ 9. The hearing at which BONYM allegedly admitted the  
3 assignment of the Deed of Trust attached to the POC was not “true and correct” occurred on  
4 August 7, 2013, with counsel for Baroni appearing and arguing at that hearing. All of these “newly  
5 discovered facts” were known to Baroni well in advance of the January 15, 2015, deadline to join  
6 parties and amend the pleadings.

7  
8 To the extent that any facts alleged in her SAC were not known to her at the initiation of  
9 this adversary proceeding, Baroni chose to ignore opportunities to discover relevant information  
10 through the discovery procedures that became available to her upon the filing of her original  
11 Complaint in 2013. This adversary proceeding was pending for nearly two years between the filing  
12 of Baroni’s original Complaint and her Motion for Leave to Amend. Baroni admits that during  
13 those two years she failed to propound any discovery whatsoever under Federal Rules of  
14 Bankruptcy Procedure 7026 – 7036.<sup>3</sup> Baroni’s failure to conduct any discovery in this adversary  
15 proceeding is not compatible with a finding of diligence. Moreover, Baroni’s filing of her Motion  
16 for Leave to Amend just three days after BONYM filed its MSJ indicates Baroni’s true motivation  
17 is to avoid summary judgment against her on the FAC.<sup>4</sup>

18  
19  
20 <sup>3</sup> It appears that Baroni relied exclusively (and inappropriately) on the BONYM 2004 Exam Order  
21 issued by the Court on January 15, 2013, for her investigation in support of her claims for relief.  
22 Although it appears undisputed that BONYM did not appear at the Rule 2004 examination set for  
February 18, 2013, Baroni failed to bring a motion to compel compliance with the BONYM 2004  
Exam Order prior to commencing this adversary proceeding.

23 <sup>4</sup> In a related adversary proceeding, *Baroni v. OneWest Bank, FSB*, case number 1:13-ap-01249,  
24 defendant OneWest Bank, FSB filed its motion for summary judgment on October 1, 2014 and  
25 Baroni responded by, *inter alia*, filing a first amended complaint on October 31, 2014, asserting  
26 additional causes of action and naming two new defendants. Baroni neither sought nor obtained  
27 leave of the Court to file this first amended complaint. In a supplemental opposition to OneWest’s  
28 motion for summary judgment, Baroni argued that the filing of her first amended complaint  
rendered the original complaint a nullity and that the Court should not consider OneWest’s pending  
motion for summary judgment. See case number 1:13-ap-01249, Adv. Dkt. 59, 106, 108.

1           **A. Additional Parties**

2           As detailed below for each of the parties Baroni seeks to join in this adversary proceeding,  
3 Baroni knew the material facts regarding each defendant at least as early as May 29, 2013, when  
4 she filed her FAC. In some cases, Baroni had actual knowledge of the facts regarding the new  
5 defendant prior to the commencement of this adversary proceeding. In her Motion for Leave to  
6 Amend, Baroni offers no explanation for why she failed to name any of these four new defendants  
7 as a party to her FAC and fails to demonstrate why she could not have moved to join the four new  
8 defendants prior to the January 15, 2015, deadline to do so. Nor does Baroni explain how any of  
9 the alleged “newly discovered facts” relates to any of the four new defendants. In each instance,  
10 Baroni has not demonstrated any diligence regarding the joining of these parties and has not  
11 established good cause to permit her to join any of them as defendants to this proceeding at this late  
12 stage.

13  
14                       1.       Bank of America, N.A.

15  
16           By her Motion for Leave to Amend, Baroni seeks to add BANA as a new defendant. In the  
17 proposed SAC (attached as Exhibit 1 to the Motion for Leave to Amend), Baroni alleges that  
18 Countrywide Home Loans, Inc. (“CHL”) is identified as the lender on the Note and Deed of Trust  
19 and that BANA, through BAC Home Loans Servicing, L.P. (“BAC”), acquired CHL on or about  
20 July 1, 2008, such that the servicing of the loan evidenced by the Note was transferred to BAC.  
21 Proposed SAC, ¶¶ 3 – 12. All of the facts alleged in these paragraphs regarding BANA ultimately  
22 acquiring the assets of CHL are a matter of public record and thus were available to Baroni when  
23 she commenced this lawsuit and are not specific to Baroni’s claims in this adversary proceeding.  
24 The only allegations in the proposed SAC regarding BANA that are specific to Baroni are that

1 Baroni tendered payments under the Note to BANA for four years (¶ 97), and that she requested,  
2 and BANA refused to provide, an accounting of amounts claimed to be owed to BONYM (¶ 98).<sup>5</sup>

3  
4 Assuming that Baroni's allegation that she made loan payments to BANA for four years is  
5 true, Baroni obviously knew that BANA either serviced, or was in the chain of title, of the Note for  
6 years before she commenced this adversary proceeding. Baroni's Amended Schedule D, filed on  
7 February 29, 2012, identifies the secured creditor associated with the Camarillo Property as Bank  
8 of America Home Loans, L.P. Case Dkt. 19 at 20. BONYM's POC filed on September 17, 2012,  
9 identifies the creditor filing the POC as BONYM but directs that all payments be made to BANA  
10 and all notices be directed to BANA. The assignment of the Deed of Trust attached to the POC  
11 expressly identifies BANA as the party requesting the recordation of that assignment. On January  
12 9, 2013, Baroni filed her BONYM 2004 Exam Motion, which states that BANA is the servicer of  
13 the debt memorialized by the Note, that BANA refuses to clarify the chain of title associated with  
14 the Note and demands documents related to BANA. Case Dkt. 252 at 5, 20. The Plan filed by  
15 Baroni on March 20, 2013, specifically identifies, and preserves, potential causes of action related  
16 to the Camarillo Property that she may assert against, *inter alia*, "[a]ll Parties listed on Schedule D  
17 who are associated with this property, even if as 'Notice Only.'" Case Dkt. 376, Exh. 2, at 000007.  
18 Amended Schedule D, in turn, identifies Bank of America Home Loans, L.P. Case Dkt. 19 at 20.  
19 Baroni's FAC alleges that BANA attempted to assign the Deed of Trust and that the signatory on

20  
21 <sup>5</sup> Baroni's proposed SAC also alleges that she obtained an order from the Court to examine BANA  
22 under Rule 2004 which she references as "(BANA 2004 Order)" (Case Doc. No. 373)." Proposed  
23 SAC, ¶ 25. The Order entered as docket number 373 relates to Baroni's *Motion Pursuant to Fed.*  
24 *R. Bankr. P. 2004 for the Production of Documents and the Oral Examination of the Person*  
25 *Designated by Countrywide Home Loans, Inc. and Bank of America National Association to Be*  
26 *Most Knowledgeable of the Topics Identified Herein*, which pertains to certain real property owned  
27 by Baroni in Henderson, Nevada and does not appear to relate to her Camarillo Property in any  
28 way. Case Dkt. 364. The reference to the "BANA 2004 Order" appears to be in error, and all of  
the references in the SAC to BANA refusing to produce documents regarding the Camarillo  
Property or the Note and Deed of Trust at issue in this adversary proceeding also appear to be in  
error and are references to BANA's alleged failure to produce documents regarding the unrelated  
Henderson, Nevada property.

1 the assignment of the Deed of Trust is an employee of BANA. FAC, ¶¶ 17 – 18. Based on these  
2 prior statements by Baroni, it is evident that she had actual knowledge that BANA was involved  
3 with servicing the debt secured by the Camarillo Property, and with the assignment of the Deed of  
4 Trust encumbering that property, before she filed her original Complaint and her FAC and for at  
5 almost two years before she filed her Motion for Leave to Amend.

6  
7 2. Structured Asset Mortgage Investments II, Inc.

8 Baroni also seeks to add SAMI II, Inc. as a new defendant to this adversary proceeding.  
9 The only allegations included in the proposed SAC regarding SAMI II, Inc. are that it was the  
10 depositor for the SAMI II 2006-AR6 offering and that it is now owned by JP Morgan Chase & Co.  
11 Proposed SAC, ¶ 14. No other allegations regarding SAMI II, Inc. are included in the proposed  
12 SAC.

13  
14 Baroni knew that SAMI II, Inc. was the depositor for the referenced offering when she filed  
15 her FAC on May 29, 2013 as the FAC specifically identifies SAMI II, Inc. as the depositor and  
16 attaches as Exhibit D to the FAC the Pooling and Servicing Agreement entered into by, *inter alia*,  
17 SAMI II, Inc. in its capacity as depositor. FAC, ¶¶ 19 – 20, Exh. D, Adv. Dkt. 9. In other words,  
18 all of the allegations regarding SAMI II, Inc. in Baroni's proposed SAC are already included in her  
19 FAC and thus were already known to her as of May 29, 2013. Despite this, Baroni makes no  
20 attempt to explain why she did not name SAMI II, Inc. as a defendant in her FAC, but instead  
21 waited nearly two years to seek to join it as a defendant.

22  
23 3. Maiden Lane, LLC.

24 Baroni seeks to add Maiden Lane, LLC as a new defendant in this action. Like the  
25 allegations regarding BANA, the allegations in the proposed SAC regarding Maiden Lane, LLC are  
26 focused on matters of public record regarding the formation of Maiden Lane, LLC by the Federal  
27 Reserve Bank of New York as a special purpose entity to allow JP Morgan Chase & Co. to acquire  
28

1 a portfolio of mortgage-related securities from Bear Sterns Companies, Inc. Proposed SAC at  
2 3:12-16 and ¶¶ 15, 38. The only allegation specific to Baroni’s claims in this adversary proceeding  
3 is that the loans associated with the SAMI II 2006-AR6 trust were among those acquired by  
4 Maiden Lane, LLC and later sold “out of” Maiden Lane, LLC in January 2012. Proposed SAC, ¶¶  
5 15, 38, 40, 41. No other allegations regarding Maiden Lane, LLC are included in the proposed  
6 SAC.

7  
8 The alleged facts regarding Maiden Lane, LLC were known to Baroni on May 29, 2013,  
9 when she filed her FAC because she specifically alleged the same facts therein. FAC, ¶¶ 21, 22,  
10 23, 37, 38. Baroni apparently was aware of these facts at least as early as January 9, 2013, when  
11 she filed her BONYM 2004 Exam Motion in which she alleges that the “SAMI II Trust 2006-AR6,  
12 a Bear Sterns originated trust, was part of the assets wholly owned by Maiden Lane, LLC . . .” and  
13 because one of the category of documents to be produced by BONYM are documents related to  
14 Maiden Lane, LLC. BONYM 2004 Exam Motion, at 5, ¶ 5; 20, ¶ 9. Case Dkt. 252. Despite  
15 having actual knowledge of the allegations regarding Maiden Lane, LLC in 2013, Baroni failed to  
16 name Maiden Lane, LLC as a defendant in her FAC and fails to offer any explanation for her  
17 failure to do so.

18 4. Wells Fargo Bank, N.A.

19  
20 Baroni seeks to add Wells Fargo as the final defendant pursuant to her proposed SAC. The  
21 only allegation regarding Wells Fargo contained therein is that Wells Fargo is the master servicer  
22 of the SAMI II 2006-AR6 mortgage loans. Proposed SAC, ¶ 13. Baroni was aware that Wells  
23 Fargo was the master servicer of the SAMI II 2006-AR6 mortgage loans at least as early as May  
24 29, 2013, when she filed her FAC because she included as Exhibit D to her FAC the Pooling and  
25 Servicing Agreement which – on its title page – identifies Wells Fargo as the master servicer.

1 FAC, Exh. D.<sup>6</sup> Baroni was aware that she held potential claims for relief against Wells Fargo  
2 regarding her Camarillo Property as her Plan, filed on March 20, 2013, expressly identified Wells  
3 Fargo as a potential defendant in her forthcoming lawsuit regarding that property. Plan, Exh. 2, at  
4 000007. Thus, Baroni knew, or should have known, the facts she now seeks to allege regarding  
5 Wells Fargo before the commencement of this adversary proceeding, and fails to offer any  
6 explanation for why she failed to name Wells Fargo as a defendant to either her original Complaint  
7 or her FAC.

8  
9 **B. Additional Claims for Relief**

10 By her Motion for Leave to Amend, Baroni also proposes to add three new claims for relief.  
11 Because she has failed to establish good cause to add any new defendants to this proceeding, her  
12 proposed new claims for relief must be considered only with respect to the original defendant,  
13 BONYM. As with her request to join new parties, Baroni's request to add new claims for relief is  
14 without merit. Baroni fails to demonstrate that even with reasonable diligence she could not have  
15 sought leave to add her new claims for relief prior to the January 15, 2015, deadline to do so and  
16 therefore fails to establish good cause to permit her to add these claims at this late stage of the  
17 proceeding.

18  
19 \_\_\_\_\_  
20 <sup>6</sup> Baroni's proposed SAC also alleges that she obtained an order from the Court to examine Wells  
21 Fargo under Rule 2004 which she references as "(Wells Fargo 2004 Order)(Case Doc. No. 259)." Proposed SAC, ¶ 26. The pleading docketed as number 259 is a notice of lodgment, not an order,  
22 and relates to the order entered as docket number 272 which in turn relates to Baroni's *Motion*  
23 *Pursuant to Fed. R. Bankr. P. 2004 for the Production of Documents and the Oral Examination of*  
24 *the Person Designated by Wells Fargo Bank National Association as Trustee for Structured*  
25 *Adjustable Rate Mortgage Loan Trust Mortgage Pass- Through Certificate Series 2005-17 to Be*  
26 *Most Knowledgeable of the Topics Identified Herein*, which (like the motion referenced in  
27 connection with BANA) pertains to certain real property owned by Baroni in Henderson, Nevada  
28 and does not appear to relate to her Camarillo Property in any way. Case Dkt. 253. The reference  
to the "Wells Fargo 2004 Order" appears to be in error, and all of the references in the SAC to  
Wells Fargo refusing to produce documents regarding the Camarillo Property or the Note and Deed  
of Trust at issue in this adversary proceeding also appear to be in error and are references to Wells  
Fargo's alleged failure to produce documents regarding the unrelated Henderson, Nevada property.

1                   1.       Accounting

2  
3                   Baroni’s Fifth Claim for Relief for an Accounting demands that BONYM properly account  
4 for all the loan payments made by Baroni in connection with the Camarillo Property. Proposed  
5 SAC, ¶¶ 96 – 98. Baroni’s BONYM 2004 Exam Motion, filed on January 9, 2013, demanded an  
6 accounting for all “payments sent and received – including all third party payments – and all  
7 consideration or value paid as a result of any debt associated with the Baronis or the property” and  
8 demanded that BONYM produce “[f]or each payment received . . . a complete payment history,  
9 including but not limited to the date and amounts of all the payments that have been made on all  
10 alleged debt . . .” as well as other categories of documents regarding payments related to the Note  
11 and the Camarillo Property. BONYM 2004 Exam Motion at 14, 19. Case Dkt. 252. Thus, Baroni  
12 knew she had a claim for relief for an accounting against BONYM since at least January 9, 2013,  
13 but failed to include this claim for relief in either her original Complaint or her FAC. Baroni has  
14 not established good cause to allow her to assert this untimely claim for relief.

15                   2.       Slander of Title

16  
17                   Baroni also seeks to add a Sixth Claim for Relief for Slander of Title to Real Property of the  
18 Estate. Baroni identified slander of title as one of her potential causes of action regarding the  
19 Camarillo Property in her Plan filed on March 20, 2013, and before the commencement of this  
20 adversary proceeding. However, Baroni’s proposed slander of title claim appears to be based on  
21 statements made by counsel for BONYM regarding the assignment of the Deed of Trust which  
22 Baroni characterizes as an “admission that the Assignment is knowingly false” and which Baroni  
23 alleges therefore “slanders the title of the [Camarillo] Property.” Proposed SAC, ¶¶ 102-103.  
24 Nowhere in the Motion for Leave to Amend or the proposed SAC does Baroni allege the specific  
25 date on which these statements were made. However, in her opposition to BONYM’s MSJ, Baroni  
26 alleged the statements were made “during oral argument at the December 4, 2013, hearing on  
27 Defendant’s Motion to Dismiss Plaintiff’s First Amended Complaint.” Adv. Dkt. 68 at 5:27-28.  
28 The oral argument referenced by Baroni actually occurred at a hearing held on August 7, 2013, at

1 which counsel for Baroni appeared and argued.<sup>7</sup> Thus, Baroni had actual knowledge of all of the  
2 facts on which her slander of title claim is based by August 7, 2013, yet she waited to seek leave to  
3 assert this claim until March 15, 2015. Baroni has been dilatory regarding her slander of title  
4 claim, and has failed to establish good cause to allow her to bring this claim at this late stage of the  
5 proceeding.

6  
7 3. Violations of California Civil Code §§ 1709, 1710

8 Baroni also seeks to add a Seventh Claim for Relief for Violations of California Civil Code  
9 Sections 1709 and 1710, California's common law fraud and deceit statutes. Baroni's proposed  
10 SAC provides a laundry list of representations allegedly made by the "Defendants," the gravamen  
11 of which are that BONYM is entitled to enforce the POC, Baroni's loan was properly transferred to  
12 the SAMI II 2006-AR6 trust and that BONYM has authority to act on behalf of the certificate  
13 holders of that trust. Baroni alleges that all of the representations were knowingly false, she relied  
14 upon them and was harmed. No specific allegations are made regarding who represented what,  
15 when and to whom, nor are there any specific allegations regarding why the representations were  
16 false or the nature of any harm suffered by Baroni. Because the allegations in support of her  
17 common law fraud claims are so general, it is impossible to discern when Baroni first became  
18 aware of the facts on which her common law fraud claims depend. Baroni's Plan, however,  
19 specifically identified "common law fraud" as one of her potential claims for relief relating to the  
20

21  
22  
23 <sup>7</sup> At the hearing on August 7, 2013, counsel for BONYM stated: "With respect to the assignment  
24 of the deed of trust that was recorded, that's merely a procedural step that a beneficiary under a  
25 deed of trust must take in order to eventually foreclose on a property. There is a line of authority  
26 based on provisions of the civil code that say if you're going to foreclose under a deed of trust, that  
27 you need to record the assignment before you do so. And that's simply why it was recorded on that  
28 date, that's not indicative of whether or not there was compliance with the pooling and servicing  
agreement, and it doesn't matter in any event because Plaintiff has no standing to challenge that."  
These comments appear to be the basis for Baroni's allegation that counsel for BONYM admitted  
that the assignment of the Deed of Trust "is knowingly false."

1 Camarillo Property. Plan, Exh. 2, at 000007. Therefore, Baroni was aware of this potential cause  
2 of action at least as of the filing of her Plan on March 20, 2013.

3  
4 The vagueness of her fraud claims also demonstrates that allowing her leave to amend  
5 would be futile. Rule 9(b) of the Federal Rules of Civil Procedure requires a plaintiff averring  
6 fraud to plead the “who, what, when, where, and how” of the alleged misconduct as well as what is  
7 false or misleading about the purportedly fraudulent statement, and why it is false. *Vess v. Ciba-*  
8 *Geigy Corp. U.S.A.*, 317 F.3d 1097, 1106 (9th Cir. 2003); *Cafasso, U.S. ex rel. v. Gen. Dynamics*  
9 *C4 Sys., Inc.*, 637 F.3d 1047, 1055 (9th Cir. 2011). Baroni’s Seventh Claim for Relief falls short  
10 of the specificity demanded by Rule 9(b) and the Ninth Circuit. As such, granting her leave to  
11 amend to assert her fraud claims would be futile.<sup>8</sup>

12  
13 **C. Matters First Asserted by Baroni in her Reply in Support of her Motion for Leave**  
14 **to Amend**

15 At the hearing on her Motion for Leave to Amend, Baroni disclosed that in addition to the  
16 four “newly discovered facts” identified in her motion as grounds for granting her leave to amend,  
17 she also asserted two additional “new developments” – essentially a fifth and sixth reason -- in  
18 support of her motion. Those “new developments” are the Ninth Circuit Bankruptcy Appellate  
19 Panel’s Rivera Decision issued on November 24, 2014, and the Supreme Court’s Jesinoski  
20 Decision issued on January 13, 2015. Baroni first cited these cases in her Reply in support of the  
21 Motion for Leave to Amend, and failed to address them in any way in that motion. Adv. Dkt. 75 at  
22 4:15-24, 5:7-16. New arguments raised for the first time in reply documents will not be

23  
24 \_\_\_\_\_  
25 <sup>8</sup> Even if Baroni could establish “good cause” under Rule 16(b), she “must also demonstrate the  
26 proposed amendment would be proper under Rule 15. . . . Under Rule 15, leave to amend should be  
27 granted unless amendment would cause prejudice to the opposing party, is sought in bad faith, is  
28 futile, or creates undue delay or prejudice to the opposing party. See *Foman v. Davis*, 371 U.S. 178,  
182, 83 S.Ct. 227, 9 L.Ed.2d 222 (1962).” *Campion v. Old Republic Home Prot. Co.*, 861 F. Supp.  
2d 1139, 1150 (S.D. Cal. 2012).

1 considered, pursuant to Local Bankruptcy Rule 9013-1(g)(4). Both decisions relied on by Baroni  
2 were issued well in advance of the filing of her Motion for Leave to Amend on March 16, 2015,  
3 and there is simply no excuse for Baroni omitting them from her Motion for Leave to Amend and  
4 raising them for the first time in her reply papers and at the hearing.

5  
6 Even if the Court were to consider these tardy arguments, Baroni fails to establish good  
7 cause to modify the Amended Scheduling Order and grant her leave to amend. Baroni relies on the  
8 Rivera Decision to argue that, contrary to authorities cited by BONYM, she has standing as a  
9 chapter 11 debtor to challenge the securitization of her Camarillo Property in a bankruptcy case.  
10 The Rivera Decision is legal authority in support of Baroni's standing to assert claims for relief  
11 which she has already pled in her FAC; it is not a decision which creates a new claim for relief or a  
12 new theory of recovery. Nothing in the Rivera Decision supports or warrants further amendment of  
13 Baroni's FAC.

14 Baroni relies on the Jesinoski Decision to argue that, based on several inadmissible letters  
15 attached as Exhibit 2 to her Reply and dated March 23, 2015, she has rescinded all transactions in  
16 connection with the Note and Deed of Trust and the Camarillo Property under the Truth in Lending  
17 Act, 15 U.S.C. §§ 1635(a), (f) ("TILA").<sup>9</sup> Baroni alleges in her FAC that she executed the Note  
18 and Deed of Trust on June 26, 2006, to effectuate the purchase of her Camarillo Property. FAC, ¶  
19 10. Assuming a lender fails to satisfy TILA's disclosure requirements, a borrower's right to rescind  
20 a loan transaction under TILA "expire[s] three years after the date of the consummation of the  
21 transaction[.]" 15 U.S.C. § 1635(f). Section 1635(f) "completely extinguishes the right of  
22 rescission at the end of the 3-year period." *Beach v. Ocwen Fed. Bank*, 523 U.S. 410, 412 (1998).  
23 As Baroni's loan originated in 2006 and her notices of rescission are dated almost *nine* years later,  
24 \_\_\_\_\_

25 <sup>9</sup> Baroni's March 23, 2015, letters are inadmissible as they are not properly authenticated. The  
26 letters are signed either by Baroni, or by her non-debtor husband, James Baroni, and are addressed  
27 to BANA, CHL and Nationstar. Neither Baroni nor her husband offer a declaration to authenticate  
28 any of the letters. Instead, only the declaration of Baroni's counsel, who is neither a signatory nor  
an addressee, is offered.

1 and as Baroni fails to offer any evidence that she gave written notice of rescission within three  
2 years of consummation of her loan, her TILA claim for rescission is time-barred and amendment of  
3 her FAC to assert such a claim would be futile.

### 4 III. CONCLUSION

5  
6 For all of the foregoing reasons, Baroni has failed to establish that she acted with diligence  
7 in this adversary proceeding to discover and name all of the relevant defendants and to timely  
8 assert all of her causes of action. Most of the material facts which she now seeks to allege were  
9 known to her prior to the filing of the original Complaint, yet Baroni waited nearly two years – and  
10 more than fifty-six days after the deadline established by the Amended Scheduling Order – to file  
11 her Motion for Leave to Amend. During the intervening two years, Baroni admits that she failed to  
12 propound any discovery in this adversary proceeding. Baroni’s conduct is not compatible with a  
13 finding of diligence and she has failed to establish good cause under Rule 16(b) to modify the  
14 Amended Scheduling Order. The Court will enter a separate order in accordance with this  
15 Memorandum of Decision.

16  
17 ###

18  
19  
20  
21  
22  
23 Date: September 30, 2015



24 \_\_\_\_\_  
Martin R Barash  
United States Bankruptcy Judge