

1 Mi Nipomo, LLC (“Nipomo”) and Costa Pacifica Estates Homeowners Association (“Costa
2 Pacifica”) oppose the motion. Having considered the pleadings, evidentiary record,² and
3 argument of counsel, the court will deny MVE’s motion to remand based upon the following
4 findings of fact and conclusions of law made pursuant to F.R.Civ.P. 52(a)(1), as incorporated
5 into FRBP 7052 and applied to adversary proceedings in bankruptcy cases.

6 I. STATEMENT OF FACTS

7 A. MVE’s Bankruptcy.

8 On March 23, 2007, MVE filed a voluntary petition for reorganization under chapter 11
9 of the Bankruptcy Code in the above referenced case. MVE involved a “single asset real estate”
10 as defined in § 101(51B). In the schedules filed on April 6, 2007, MVE disclosed as its only
11 significant asset a real estate development of 84 acres of real property located at 555 Vista Del
12 Rio, Nipomo, CA (the “MVE Project”).

13 1. Security Pacific Bank’s Motion for Relief from Stay

14 Security Pacific Bank asserted the following liens against the MVE Project: (1) A
15 Construction Deed of Trust (“First Construction Deed of Trust”) against Phase I of the MVE
16 Project securing a note in the original principal sum of \$15,800,000 dated December 28, 2004
17 (“Phase I Loan”); and (2) a Construction Deed of Trust (“Second Construction Deed of Trust”)
18 against Phase II of the MVE Project securing a note in the original principal sum of \$7,850,000
19 dated November 2, 2005 (“Phase II Loan”). Each of the notes was personally guaranteed by Erik
20 Benham (“Benham”).

21 Prior to the petition date, Security Pacific Bank had filed suit to foreclose its liens against
22 the MVE Project in Case No. CV061009, Security Pacific Bank v. Maria Vista Estates, et. al, in
23

24 Bankruptcy Procedure (“FRBP”), which make applicable certain Federal Rules of Civil
25 Procedure (“F.R.Civ.P.”). “LBR” references are to the Local Bankruptcy Rules of the United
26 States Bankruptcy Court for the Central District of California (“LBR”).

27 ² Plaintiff Maria Vista Estates’ Objection to Defendants’ Request for Judicial Notice is
28 overruled. The respective requests for judicial notice by MVE and Nipomo pursuant to
F.R.Evid. 201 with respect to MVE’s motion to remand and Nipomo’s opposition thereto are
granted.

1 the Superior Court of California, County of San Luis Obispo (“Judicial Foreclosure Action”).
2 On April 14, 2008, Security Pacific Bank filed a motion seeking relief from the automatic stay
3 under § 362(d)(3) to continue the Judicial Foreclosure Action. MVE opposed the motion. On
4 May 12, 2008, the court entered an order granting Security Pacific Bank relief from the stay to
5 enforce its rights with respect to the following described real property in the MVE Project:

6 **“Phase I”**

7 LOT 1 AND THE “REMAINDER LOT” OF TRACT 1856, PHASE 1 IN THE
8 UNINCORPORATED AREA OF THE COUNTY OF SAN LUIS OBISPO,
9 STATE OF CALIFORNIA ACCORDING TO MAP RECORDED MAY 20,
10 2002 IN BOOK 20, PAGE 12 OF MAPS IN THE OFFICE OF THE COUNTY
11 RECORDER OF SAID COUNTY.

12 **Excepting:**

13 LOT 6 OF TRACT NO. 1802, PHASE 2, IN THE COUNTY OF SAN LUIS
14 OBISPO, STATE OF CALIFORNIA, ACCORDING TO THE TRACT MAP
15 RECORDED FEBRUARY 1, 2005 IN BOOK 25, PAGES 36 THROUGH 46 OF
16 MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

17 **“Phase II”**

18 LOTS 15, 16, 33 THROUGH 38 INCLUSIVE AND 46 THROUGH 52
19 INCLUSIVE OF TRACT 1802, PHASE 2, IN THE COUNTY OF SAN LUIS
20 OBISPO, STATE OF CALIFORNIA, ACCORDING TO MAP RECORDED
21 FEBRUARY 1, 2005, IN BOOK 25, PAGES 36-46 OF MAPS, IN THE OFFICE
22 OF THE COUNTY RECORDER OF SAID COUNTY.³

23 **2. Security Pacific Bank’s Motion to Correct Stay Order**

24 On June 9, 2008, Security Pacific Bank filed an Emergency Motion for Order Correcting
25 the Legal Description of the “Phase I” Property in the Order Granting Security Pacific Bank
26 Relief From the Automatic Stay. Security Pacific Bank asserted, in pertinent part, that: (1) the
27 legal description of the Phase I property contained in the Stay Order was based on an incorrect
28 legal description contained in the First Construction Deed of Trust recorded as Instrument No.
2005001667 on January 7, 2005; (2) the First Construction Deed of Trust was re-recorded as

³ Order Granting Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (“Stay Order”) [Dkt. # 93], Exhibit 1.

1 Instrument No. 2005042186 on May 24, 2005 (“Re-recorded First Construction Deed of Trust”),
2 to correct the legal description of Security Pacific Bank’s collateral; and (3) that MVE agreed to
3 the correction by letter agreement dated June 20, 2005, executed by MVE’s general partners,
4 BenIng Company, LLC⁴ and Pender Properties, Inc. Benham responded to the motion on June
5 11, 2008, stating that Security National Bank is “trying to establish a security interest that I have
6 disputed and that this court specifically withheld ruling on.”⁵

7 On June 23, 2008, the court overruled Benham’s objection and entered an amended order
8 granting Security Pacific Bank relief from the stay to enforce its rights with respect to the
9 following described real property in the MVE Project:

10 **“Phase I”**

11 PARCEL 1:

12 ALL OF TRACT NO. 1802, PHASE 2, IN THE COUNTY OF SAN LUIS
13 OBISPO, STATE OF CALIFORNIA, ACCORDING TO MAP RECORDED
14 FEBRUARY 1, 2005 IN BOOK 25, PAGES 36-46 OF MAPS, IN THE OFFICE
15 OF THE COUNTY RECORDER OF SAID COUNTY.

16 EXCEPTING THEREFROM LOTS 15, 16, 33 THROUGH 38 INCLUSIVE
17 AND 46 THROUGH 52 INCLUSIVE.

18 PARCEL 2:

19 ALL OF TRACT 1856, PHASE 2, IN THE COUNTY OF SAN LUIS OBISPO,
20 STATE OF CALIFORNIA, ACCORDING TO MAP RECORDED FEBRUARY
21 1, 2005, IN BOOK 25, PAGE 47-50 OF MAPS, IN THE OFFICE OF THE
22 COUNTY RECORDER OF SAID COUNTY.

23 **Excepting:**

24 LOT 6 OF TRACT NO. 1802, PHASE 2, IN THE COUNTY OF SAN LUIS
25 OBISPO, STATE OF CALIFORNIA, ACCORDING TO THE TRACT MAP
26 RECORDED FEBRUARY 1, 2005 IN BOOK 25, PAGES 36 THROUGH 46 OF
27 MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

28 ⁴ Sometimes referred to in other pleadings filed with this court as “BenIng Company, L.L.C.,”
“Benning, Inc.,” “Bening Company, LLC,” “Bening, Inc.,” and “BenIng, Inc.”

⁵ Erik Benham’s Memorandum of Points and Authorities in Opposition to Security Pacific
Bank’s Emergency Motion [Dkt. # 107] filed June 11, 2008, at 9:11-13.

1 **“Phase II”**

2 LOTS 15, 16, 33 THROUGH 38 INCLUSIVE AND 46 THROUGH 52
3 INCLUSIVE OF TRACT 1802, PHASE 2, IN THE COUNTY OF SAN LUIS
4 OBISPO, STATE OF CALIFORNIA, ACCORDING TO MAP RECORDED
5 FEBRUARY 1, 2005, IN BOOK 25, PAGES 36-46 OF MAPS, IN THE OFFICE
6 OF THE COUNTY RECORDER OF SAID COUNTY.⁶

7 3. MVE’s Case Converts to Chapter 7

8 Pursuant to § 1112(b), the court converted MVE’s chapter 11 case to a case under chapter
9 7 by order entered on July 9, 2008. Jerry Namba (“Namba”) was appointed as trustee. Namba
10 appealed the Amended Stay Order on the grounds that the bankruptcy court “necessarily [found],
11 without due process, that Security Pacific Bank is a secured party with a perfected security
12 interest in the collateral described in Exhibit A to the Amended Order.”⁷ The appeal was
13 transferred to the district court at the election of Security Pacific Bank and assigned Case No.
14 2:08-CV-05399-CBM.

15 On October 3, 2008, the district court dismissed the appeal pursuant to a stipulation
16 between Namba and Security Pacific Bank filed September 25, 2008, pursuant to which Namba
17 and Security Pacific Bank agreed that the bankruptcy court did not by the Amended Stay Order
18 make a determination whether Security Pacific Bank’s liens were duly perfected against the real
19 property described in Exhibit 1 to the order and that the Amended Stay Order was not res
20 judicata as to the nature, extent, validity and priority of Security Pacific Bank’s liens against
21 such property. With dismissal of the appeal, the Amended Stay Order became a final order.

22 B. Benham’s Bankruptcy Case.

23 On June 24, 2008, Benham filed a voluntary petition under chapter 11 in Case No. 9:08-
24 bk-11432, In re Erik Benham, Debtor. In Schedule B(18), Benham disclosed as a liquidated debt
25 owed on the petition date the sum of \$8,500,000 secured by a “1st position deed of trust in part

26
27 ⁶ Amended Order Granting Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362
28 (“Amended Stay Order”) [Dkt. # 115], Exhibit 1.

⁷ Statement of Issues on Appeal [Dkt. # 122] filed on July 14, 2008, at 2:2-5.

1 and second position deed of trust in part against real property owned by Maria Vista Estates.”⁸
2 In Schedule B(21), which requires a disclosure of “other contingent and unliquidated claims of
3 every nature” held on the petition date, Benham responded “none.”⁹ Security Pacific Bank was
4 listed in Schedule F as the holder of an unsecured claim in the amount of \$23,346,626.15 based
5 upon a judgment on Benham’s personal guaranty of MVE’s debt to Security Pacific Bank
6 entered in the Judicial Foreclosure Action on November 6, 2007.

7 1. Security Pacific Bank’s Motion for Relief from Stay

8 On July 11, 2008, Security Pacific Bank filed a motion in Benham’s bankruptcy case
9 seeking relief from the automatic stay under § 362(d)(1) & (4) to foreclose its deed of trust liens
10 on the MVE Project, notwithstanding Benham’s assertion in his Schedule B of a lien on the
11 project. Security Pacific Bank argued that it had noticed the foreclosure sales of MVE’s Phase I
12 and Phase II properties, that Benham had sought and was denied a temporary restraining order to
13 prevent the bank from foreclosing on MVE’s Phase I property, and that Benham had filed his
14 chapter 11 petition in bad faith for the sole purpose of hindering and delaying Security Pacific
15 Bank’s efforts to foreclose on its collateral. Benham responded on July 28, 2008, claiming that
16 “the Bank’s [Re-recorded First Construction Deed of Trust] was fraudulently recorded and does
17 not create a lien in favor of the Bank with respect to at least 25 lots created out of the original lot
18 1802.”¹⁰ Benham testified by declaration that:

19 I purchased two parcels in Nipomo, California, comprising 84.4 acres which will
20 be referred to as lot 1802 and lot 1856. I entered into a transaction in which I
21 formed Benning, Inc. Mark Pender created Pender Properties, inc. [sic] LLC, and
22 our two corporations entered into an agreement creating the Maria Vista Estates
23 general partnership. I then sold the Nipomo parcels to Maria Vista Estates. The
24 sale price was in excess of \$8 million, which was paid with a promissory note, . . .

25
26 ⁸ Schedule B [Dkt. # 14], at 11.

27 ⁹ Id.

28 ¹⁰ Debtor’s Opposition to Points and Authorities in Opposition to Security Pacific Bank’s
Motion for Relief from the Automatic Stay [Dkt. # 30] filed July 28, 2008, at 11:16-18.

1 Maria Vista Estates obtained financing from a third party, which was used to
2 subdivide the parcels. Lot 1802 was subdivided into 40 residential lots. Lot 1856
3 was subdivided into 37 residential lots and the remainder lots for common areas
4 and percolation sights. . .

5 MVE then obtained a loan in the initial principal sum of \$15,800,000, reflected in
6 the promissory note attached as exhibit 7 to the motion (the "1st Bank Loan").
7 The 1st Bank Loan was secured by the deed of trust recorded on January 11,
8 2005, . . . The 1st Bank Deed of Trust was secured only by lot 1856. . .

9 Mr. Pender and I then executed a Modification of Deed of Trust . . .

10 The Bank then recorded the document it attaches as exhibit 5 to its motion
11 [Corrected Deed of Trust]. This document purports to extend the 1st Bank Deed
12 of Trust to all of lot 1802 and lot 1856. This document attaches a new front page
13 and two new pages to the back of the 1st Bank Deed of Trust. This document will
14 be referred to as the Bank's exhibit 5.

15 Neither Mr. Pender nor I signed the Bank's Exhibit 5 in April, 2005 or at any
16 other time. We did not appear in front of the notary, who purportedly notarized
17 our signatures in April, 2005. For this reason, the Bank's Exhibit 5 is a fraud and
18 was fraudulently recorded.

19 MVE then borrowed an additional \$7,850,000 from the Bank, as reflected in
20 exhibit 8 to the motion (the "2nd Bank Loan"). The 2nd Bank Loan is secured by
21 the deed of trust attached as exhibit 6 to the motion (the "2nd Bank Deed of
22 Trust"). The 2nd Bank Deed of Trust is secured by fifteen specifically identified
23 lots created out of lot 1802.

24 Although my deed of trust does not extend to lot 1856, it is in first position with
25 respect to at least 25 of the lots created out of the original lot 1802.

26 Because my Promissory Note bears a face value in excess of \$8,000,000, my
27 Promissory Note secured by my Deed of Trust is overwhelmingly the most
28 important and valuable asset of this bankruptcy estate. My deed of trust, securing
first position in 25 lots with homes and second position in fifteen lots with homes,
is essential for my reorganization as a debtor.¹¹

On November 7, 2008, Security Pacific Bank was closed by the California Department of
Financial Institutions and the Federal Deposit Insurance Corporation was appointed as receiver
for Security Pacific Bank ("FDIC"). The FDIC succeeded to ownership of the assets of the bank,

¹¹ Id. 13:24 – 15:20.

1 including all rights, claims, interests and liens of Security Pacific Bank with respect to the
2 obligations of MVE and Benham. On April 2, 2009, the court granted the FDIC relief from the
3 stay to enforce its liens against the MVE Project. The order specifically provided that “no
4 determination is made hereby as to the validity, extent, priority, or enforceability of either (x) the
5 Putative Benham Deed of Trust, or (y) the liens in favor of the Bank, in respect of the
6 Property.”¹² On April 24, 2009, the court denied Benham’s motion to reconsider its April 2nd
7 order.

8 2. Benham’s Case Converts to Chapter 7

9 On November 12, 2009, Benham’s chapter 11 case was converted to a case under chapter
10 7. Brad D. Krasnoff, who was appointed as trustee upon conversion, resigned on December 4,
11 2009, and David R. Hagen (“Hagen”) was appointed as successor trustee.

12 C. Adversary No. 9:09-ap-01051.

13 On March 12, 2009, the FDIC filed a complaint against Benham in Adversary No. 9:09-
14 ap-01051, Federal Deposit Insurance Corporation, as Receiver for Security Pacific Bank v. Erik
15 Benham, seeking “a judicial determination and declaration that the deed of trust, made and
16 executed by the debtor herein, Maria Vista, as trustor, in favor of Erik Benham (“Benham”) as
17 beneficiary, dated March 18, 2003, and recorded in the Office of the County Recorder of San
18 Luis Obispo on April 18, 2003 (the ‘Benham Deed of Trust’), does not constitute a valid or
19 otherwise enforceable lien on the real property of the Maria Vista described in the Benham Deed
20 of Trust (the ‘Property’), or any other property of the bankruptcy estate of Maria Vista.”¹³ After
21 Benham filed an answer to the complaint, the FDIC joined by Namba moved for summary
22 judgment. The FDIC’s motion was granted after a contested hearing on July 2, 2009. On
23 August 10, 2009, a Judgment was entered in favor of the FDIC and against Benham which
24 provided, in pertinent part:

25
26 ¹² Order Re Motion for Relief From Automatic Stay Under 11 U.S.C. § 362 [Dkt. # 132] entered
27 April 2, 2009, at 3:15-17.

28 ¹³ Complaint to Determine Validity of Lien Against Property of the Estate [Dkt. # 1] filed March
12, 2009, at 2:18-24.

1 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, as a
2 consequence of execution and recordation of that certain “Substitution of Trustee
3 and Full Reconveyance,” dated July 23, 2007, and recorded in the Office of the
4 County Recorder of San Luis Obispo, on October 9, 2007, as Instrument No.
5 2007066511 (the “Full Reconveyance”), to the fullest extent described or
6 otherwise referenced in the Full Reconveyance, that certain Deed of Trust,
7 Assignment of Rents, and Security Agreement,” dated March 18, 2003, and
8 recorded on April 18, 2003, in the Office of the County Recorder of San Luis
9 Obispo as Instrument No. 2003040009 (the “Original Benham Deed of Trust”), as
10 modified and amended by that certain “Modification of Deed of Trust,” recorded
11 in the Office of the County Recorder of San Luis Obispo as Instrument No.
12 2003087433 (the Original Benham Deed of Trust, as modified by the
13 “Modification of Deed of Trust” is hereinafter referred to as the “Benham Deed of
14 Trust”), the Benham Deed of Trust was canceled and extinguished, and the
15 Benham Deed of Trust is of no force or effect; and it is further

16 ORDERED, ADJUDGED AND DECREED that each of (1) the execution, (2) the
17 delivery, and (3) the recordation of that certain “Agreement Cancelling
18 Reconveyance and Reinstating Deed of Trust and Promissory Note” recorded on
19 January 16, 2008, in the Office of the County Recorder of San Luis Obispo as
20 Instrument No. 2008002289, is (x) void, (y) of no force or effect, and (z) does not
21 serve to create, maintain, or reinstate any lien on the Property¹⁴

22 Benham appealed the Judgment on August 20, 2009, but the appeal ultimately was dismissed on
23 February 25, 2011, for lack of prosecution.

24 D. Adversary No. 9:09-ap-01197.

25 Despite the Judgment entered in Adversary No. 9:09-ap-01051 eleven days earlier,
26 Benham filed a complaint in Adversary No. 9:09-ap-01197, Benham v. Jerry Namba, as Chapter
27 7 Trustee for Debtor Maria Vista Estates on August 31, 2009, asserting that the execution and
28 recordation of the Full Reconveyance was a mistake, the Full Reconveyance was void, and that
the court should “declare [Benham’s] liens over the property of the Debtor Maria Vista Estates
under the Deed of Trust and Modification of Deed of Trust exist as if the Full Reconveyance had
never been executed and recorded.”¹⁵ On September 22, 2009, the FDIC intervened and

¹⁴ Judgment [Dkt. # 37] entered August 10, 2009, at 2:5-22.

¹⁵ Adversary Complaint to Determine Validity of Lien and Cancel Erroneous Reconveyance [sic] [Dkt. # 1] filed August 31, 2009, at 4:8-10.

1 thereafter moved to dismiss Benham’s complaint. Before the motion was heard, Benham’s
2 bankruptcy case was converted to chapter 7 and Hagan was appointed trustee. On December 3,
3 2010, Hagan, as the real party in interest, filed a statement of position in response to the FDIC’s
4 motion to dismiss stating that “the claims asserted in the Adversary Proceeding are assets of the
5 Benham Bankruptcy Case, and are now under the exclusive administration of Hagen as Chapter
6 7 Trustee,” and that such claims “are the subject of a pending settlement between Hagan and
7 various third parties, including, but not limited to the FDIC.”¹⁶ On February 11, 2011, the court
8 entered an order denying the FDIC’s motion and abstaining from further consideration of the
9 adversary proceeding “as a consequence of (a) the pendency of the Appeal, and (b) the apparent
10 lack of standing of Benham to commence and prosecute [the] adversary proceeding and the
11 putative claims asserted therein.”¹⁷ The order was not appealed.

12 E. Hagan’s Sale Motion.

13 On June 16, 2010, Hagan filed a motion seeking approval of a compromise and authority
14 to sell the following assets of the Benham bankruptcy estate (collectively, “Rights, Claims and
15 Interests”), free and clear of liens, interests and encumbrances, to Nipomo Acquisition, LLC
16 (“Nipomo Acquisition”) for the sum of \$450,000, subject to overbid:

17 (i) any and all rights, claims, interests, causes of action, demands of the Debtor,
18 the Estate and the Trustee against (1) Security Pacific Bank (“Bank”)’ the Federal
19 Deposit Insurance Corporation, as Receiver for Security Pacific Bank (“FDIC”),
20 (3) Multibank 2009-1 Res-ADC Venture, LLC (“Multibank”), and (4) Fidelity
21 National Title Company (“Fidelity”), and each and any of their respective parents,
22 subsidiaries, affiliates, successors and assigns, past and present officers, directors,
23 owners, members, representatives, agents, attorneys, and insurers, and each of
24 them, and any of their respective successors and assigns, past or present

25 ¹⁶ Statement of Position By David R. Hagen, Chapter 7 Trustee of In re Erik Benham, Case No.
26 9:08-bk-11432-RR, With Regard to Motion By Intervenor Federal Deposit Insurance
27 Corporation to Dismiss Erik Benham’s Adversary Complaint to Determine Validity of Lien and
28 to Cancel Erroneous Reconveyance [Dkt. # 40] filed December 3, 2010, at 2:18-22.

¹⁷ Order Re Motion to Dismiss Plaintiff Erik Benham’s Adversary Complaint to Determine
Validity of Lien and Cancel Erroneous Reconveyance [Dkt. # 43] entered on February 11, 2011,
at 3:2-5.

1 (collectively, the “FDIC Parties”), or against the rights, title or interests of any of
2 the FDIC Parties in and to approximately 84 acres of land owned by the MVE
3 bankruptcy estate located in the County of San Luis Obispo, State of California,
4 on which MVE partially completed the construction of single family dwellings
5 (the “Real Property”);

6 (ii) any and all claims, as defined in section 101(5) of the Bankruptcy Code, of the
7 Debtor and the Estate against MVE, including the Maria Vista Claim;

8 (iii) any and all interests in, causes of action, demands, claims against, and liens
9 of the Debtor and the Estate upon the Real Property, however arising, including
10 all rights and beneficial interests under the Benham Deed of Trust and any liens
11 upon any personal property of MVE appertaining to the Real Property;

12 (iv) any and all rights, claims, causes of action, demands, and powers of the
13 Debtor and the Estate to reinstate the Benham Deed of Trust as a lien
14 encumbering the Real Property (whether through rescission of the Full
15 Reconveyance or otherwise), including those (1) claims and defenses advanced by
16 the Debtor in defense of, and opposition to, the FDIC Adversary Proceeding, (2)
17 claims or defenses asserted by or on behalf of the Debtor in the Benham Appeal,
18 and (3) claims, demands, requests for relief, causes of action and remedies
19 asserted or sought by the Debtor in the Benham Adversary Proceeding; and

20 (v) any and all rights, claims, causes of action, demands, and powers, including
21 any arising under section 544 of the Bankruptcy Code, of the Debtor and the
22 Estate (1) relating to the Loan and the Additional Loan, or (2) to affect, avoid,
23 subordinate, modify, or otherwise alter the First Construction Deed of Trust, the
24 Re-Recorded First Construction Deed of Trust, the Second Construction Deed of
25 Trust, or each of them, and any of the rights and liens created thereby.¹⁸

26 Benham objected to the Sale Motion by response filed on December 22, 2010, and appeared in
27 opposition to the Sale Motion at the hearing thereon. On January 10, 2011, the court overruled
28 Benham’s objection and approved a sale of the Rights, Claims and Interests to Nipomo
Acquisition as the successful bidder. An order approving the sale was entered on January 25,
2011.¹⁹ Benham filed a notice of appeal. On April 23, 2013, Benham’s appeal of the Sale Order

¹⁸ Notice of Motion and Motion for Order Approving (A) Sale of Rights, Claims and Interests Free and Clear of All Liens, Claims, Interests and Encumbrances; and (B) Settlement and Compromise of Estates Rights, Claims and Interests Pursuant to Bankruptcy Rule 9019; Memorandum of Points and Authorities in Support Thereof; Declaration of David R. Hagan in Support Thereof (“Sale Motion”) [Dkt. # 383], at 6:23-7:21.

1 was ultimately dismissed by the Ninth Circuit for want of prosecution. Benham’s petition for a
2 writ of certiorari to the United States Supreme Court was denied on January 27, 2014.

3 F. Adversary No. 9:10-ap-01171.

4 While the Sale Motion was pending, Benham filed a complaint in Adversary No. 9:10-
5 ap-01171, Benham v. Federal Deposit Insurance Corporation, et al., in the MVE bankruptcy case
6 on June 22, 2010 (“Benham Adversary Proceeding”), alleging, in pertinent part, that the Re-
7 recorded First Construction Deed of Trust owned by the FDIC, as successor to Security Pacific
8 Bank, was a document forged by Security Pacific Bank, that Fidelity recorded the document with
9 knowledge of the forgery, and that the FDIC “continues to collude and maintain the fraud of the
10 Bank and Fidelity as receiver for Bank to the financial devastation of MVE.”²⁰ Benham sought
11 damages and other relief based upon the 13 claims alleged in the complaint, including fraud,
12 conversion, civil conspiracy, breach of fiduciary duty, negligence, bankruptcy fraud, forgery, and
13 obstruction of justice. On July 26, 2010, the FDIC and Fidelity each filed a motion under
14 F.R.Civ. P. 12(b)(6) seeking dismissal of the complaint under F.R.Civ.P. 12(b)(6) because
15 Benham lacked the requisite standing to pursue the claims made the basis of the complaint.
16 Benham opposed the motions claiming derivative standing in that the complaint ostensibly was
17 filed on behalf of all unsecured creditors of the MVE bankruptcy case.

18 On February 24, 2011, Nipomo Acquisition, which had purchased the claims made the
19 basis of the Complaint from the Benham bankruptcy estate on January 25, 2011, filed a Notice of
20 Dismissal of Adversary Proceeding Pursuant to Bankruptcy Rule 7041. The Benham Adversary
21 Proceeding was dismissed over Benham’s opposition and closed on June 22, 2011. The
22 dismissal was not appealed.

23
24
25 ¹⁹ Order Approving (A) Sale of Rights, Claims and Interests Free and Clear of All Liens, Claims,
26 Interests and Encumbrances; and (B) Settlement and Compromise of Estates Rights, Claims and
Interests Pursuant to Bankruptcy Rule 9019 (“Sale Order”) [Dkt. # 477].

27 ²⁰ Complaint [Dkt. # 1] filed June 22, 2010, at 6:3-4. The allegations in paragraphs 12-30 of the
28 complaint in the Benham Adversary Proceeding entitled “Background Facts” are nearly identical
to the allegations in paragraphs 10 through 28 of MVE’s complaint in this adversary proceeding.

1 G. Foreclosure Under the First Construction Deed of Trust and Re-recorded First Construction
2 Deed of Trust.

3 On November 24, 2008, the FDIC filed Proof of Claim # 45 in the amount of
4 \$22,535,906.49 for the balance due under the Phase I Loan and Phase II Loan. On February 8,
5 2010, the FDIC transferred Proof of Claim # 45 to Multibank.²¹ On August 17, 2010, Sequoia
6 Financial Solutions IV, LLC (“Sequoia”) purchased the Phase I Loan from Multibank.²²

7 On February 17, 2011, Sequoia foreclosed its liens under the First Construction Deed of
8 Trust and Re-recorded First Construction Deed of Trust securing the Phase I Loan. Nipomo Real
9 Estate Group, LLC and Banconsulting Services, LLC purchased the lots securing the Phase I
10 Loan at the foreclosure sale as evidenced by Trustee’s Deed recorded as Instrument No. 11-
11 13958 in the San Luis Obispo County Real Property Records on March 22, 2011.

12 H. MVE Abandonment Order.

13 On March 11, 2011, Namba filed and served a notice of his intention “to abandon the
14 estate’s interest, if any, in the entire 84 acre Maria Vista Estates project, located at 555 Vista Del
15 Rio, Nipomo, California (the “Property”).”²³ In his notice, Namba stated:

16 The Trustee has concluded that all of the Property is burdensome to the estate and
17 is of inconsequential value or benefit to the estate. Specifically, the Property does
18 not have any equity that can be liquidated for the benefit of the estate. Secured
19 claims against the Property exceed \$23,000,000 and proposed purchase offers for
20 the Property have not exceeded \$13,000,000. In addition, the estate lacks
21 sufficient funds to continue to insure the Property and to maintain 24-hour
22 security. Therefore, based on the foregoing, the Trustee contends pursuant to his
23 business judgment, that the abandonment of the estate’s interest in the Property, if
24 any, is in the best interests of the estate and its creditors.²⁴

25 MVE and Benham were served with the notice. Neither filed opposition nor requested a hearing.

26 On April 28, 2011, the court entered an order authorizing Namba “to abandon the estate’s
27
28

24 ²¹ Request for Issuance of Notice of Transfer of Claim Pursuant to F.R.B.P. 3001(e) [Dkt. # 336]
25 filed April 28, 2010.

26 ²² Request for Issuance of Notice of Transfer of Claim Pursuant to F.R.B.P. 3001(e) [Dkt. # 366]
27 filed December 22, 2010.

28 ²³ Notice of Chapter 7 Trustee’s Intention to Abandon Assets [Dkt. # 379], at 1:25-26.

²⁴ Id. at 2:1-8.

1 interest, if any, in the entire 84 acre Maria Vista Estates project, located at 555 Vista Del Rio,
2 Nipomo, California” and stating that “such abandonment shall be deemed effective without
3 further order of the Court.”²⁵ The Abandonment Order was not appealed and is a final order.

4 I. Settlement of MVE Estate’s § 506(c) Claim.

5 On June 16 2011, Namba filed a motion in the MVE bankruptcy case seeking approval of
6 a settlement with Sequoia, Fidelity, and RES-CA MV Estates, LLC (the “FDIC Parties”) under
7 the terms of which (1) the MVE bankruptcy estate would receive the sum of \$200,000 in
8 settlement of its claim against the FDIC Parties for recovery of the reasonable, necessary costs
9 and expenses incurred in preserving the MVE Project for the benefit of the FDIC Parties; and (2)
10 in consideration therefor, the FDIC Parties would receive a release of claims from the MVE
11 bankruptcy estate.²⁶ The Settlement Agreement between Namba and the FDIC Parties executed
12 by Namba on June 8, 2011, attached to the Settlement Motion as Exhibit “1,” provided in
13 pertinent part:

14 3. Release. Trustee hereby releases, waives and relinquishes all claims, rights,
15 causes of actions or contentions (collectively, “Claims”) of any kind or nature,
16 whether transferable or assignable, that he may possess or own that he may assert
17 against any of the FDIC Parties arising in any way out of the Property, and/or
18 security interests asserted or taken in the Property. Said releases extend to any
19 and all claims that would otherwise be preserved under Section 1542 of the
California Civil Code, and hereby waives his rights under said section, which
reads as follows:

20 “A General release does not extend to claims which the creditor
21 does not know or suspect to exist in his or her favor at the time of
22 executing the release, which if known by him or her must have
materially affected his or her settlement with the Debtor.

23 Trustee hereby warrants and represents that he has not transferred, sold, alienated,
24 pledged or otherwise encumbered, and will not, transfer, sell, alienate or

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26 ²⁵ Order Authorizing Chapter 7 Trustee’s Abandonment of Real Property Asset (“Abandonment
Order”) [Dkt. # 381], at 2:1-4.

27 ²⁶ Chapter 7 Trustee’s Motion for Order Authorizing Compromise of Estates’ 11 U.S.C. §
28 506(c); Memorandum of Points and Authorities; Declaration of Jerry Namba in Support Thereof
 (“Settlement Motion”) [Dkt. # 383].

1 otherwise encumber, the Claims prior to the tender of the sums called for in this
2 Agreement.²⁷

3 On June 16, 2011, MVE and Benham were served with the Settlement Motion and notice
4 of an opportunity to request a hearing on the motion. The notice recited “[t]he salient terms of
5 the proposed settlement” and specifically stated that “the Trustee will provide the FDIC Parties
6 with a full general release (more specifically described in the Agreement).”²⁸ On June 28, 2011,
7 Benham filed a response in opposition to the Settlement Motion charging, among other things,
8 that Namba “proposes a Compromise of the Maria Vista Estates Property subject to a potentially
9 invalid Deed of Trust,” that Namba “has never analyzed or has just completely ignored the full
10 extent of the fraudulent nature of the [Security Pacific] Bank, its owner Ezri Namvar, and Diana
11 Voss of Fidelity National Title,” and that approval of the Settlement Motion should be denied
12 because “the Compromise does not address the validity of the Bank’s Re-Recorded Deed of
13 Trust” or “the value of any of the assets being Compromised.”²⁹ At a hearing on September 6,
14 2011, Benham appeared and was heard in opposition to the proposed compromise. Benham’s
15 objection was overruled at the conclusion of the hearing. On September 12, 2011, an order was
16 entered authorizing Namba “to enter into the proposed compromise on the terms set forth in the
17 Settlement Agreement attached as Exhibit ‘1’ to the Motion” and determining that “[n]otice of
18 the Motion was adequate under the circumstances and pursuant to 11 U.S.C. § 102.”³⁰ The
19 Settlement Order was not appealed and is a final order.

20 J. Adversary No. 9:12-ap-01056.

21 On February 24, 2012, Benham filed a complaint against Sequoia, Sequoia Equities, Inc.,
22 Sequoia Debt Ventures, Inc., Sequoia Ventures Group, Inc., Inland Community Bank, California

23 ²⁷ Id. at Exhibit 1, 4-5.

24 ²⁸ Notice of Chapter 7 Trustee’s Motion for Order Authorizing Compromise of Controversy
25 [FRBP § 9019; LBR § 9013-1] [Dkt. # 384], at 2:11-16.

26 ²⁹ Preliminary Opposition to Motion for Order: (1) Authorizing Compromise of Estates’ 11
27 U.S.C. § 506(c), at 5:14-18; 8:13-14.

28 ³⁰ Order Granting Trustee’s Motion for Order Authorizing Compromise of Estate’s § 506(c)
Claim (“Settlement Order”) [Dkt. # 388], at 1:26-2:4.

1 Funding, Fidelity, Roger Hoss, Joseph Eisenberg, Nipomo Acquisitions, Nipomo Real Estate
2 Group, L.L.C., Ban Consulting Services, L.L.C., Multibank, Rialto Capital Management, LLC,
3 and First American Title Company (“First American”) in Case No. CV-120116, Benham v.
4 Sequoia Equities, Inc., et al., in the Superior Court of California, County of San Luis Obispo.
5 Benham’s First Amended Complaint (“Sequoia Complaint”) alleged nine causes of action: (1)
6 Fraud; (2) Aiding and Abetting Fraud; (3) Civil Conspiracy to Commit Conversion; (4) Breach
7 of Fiduciary Duty; (5) Negligent Misrepresentation; (6) Declaratory Relief; (7) Unfair Business
8 Practices; (8) Breach of the Covenant of Good Faith and Fair Dealing, and (9) Tortious
9 Interference predicated on Benham’s contention that the Re-recorded First Construction Deed of
10 Trust was forged. The factual allegations in paragraphs 20-37 of the Sequoia Complaint are
11 substantively identical to the factual allegations in both paragraphs 12-30 of the complaint in the
12 Benham Adversary Proceeding and paragraphs 10-28 of MVE’s Complaint in this adversary
13 proceeding.

14 On March 5, 2012, First American removed the Sequoia Complaint to this court in
15 Benham’s bankruptcy case, arguing that “[t]he Trustee entered into an agreement with the parties
16 allegedly responsible for the forged deed of trust” and “purchased the claims the bankruptcy
17 estate held against them” in an agreement approved by the court on January 25, 2011.³¹ On
18 November 28, 2012, the court granted summary judgment in favor of Joseph A. Eisenberg and
19 Nipomo Acquisitions on the causes of action set forth in the Sequoia Complaint. By separate
20 orders, the court dismissed with prejudice the claims made the basis of the Sequoia Complaint
21 against the remaining named defendants. Benham appealed each of the orders. On March 21,
22 2013, the district court dismissed Benham’s appeal of two orders as untimely. On September 12,
23 2014, the district court dismissed the balance of his appeal for lack of standing. The appeal is
24 pending before the Ninth Circuit.

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28 ³¹ Notice of Removal of Civil Action Pursuant to 28 U.S.C. § 1452(a), at 4:1-4.

1 K. Namba's Final Report in MVE.

2 On March 15, 2013, Namba filed his Trustee's Final Report in the MVE bankruptcy case.
3 Benham objected to Namba's final report and request for compensation, alleging that Namba had
4 not fulfilled his statutory duties as trustee because he had not independently investigated
5 Benham's claim of fraud against Security Pacific Bank and Fidelity in conjunction with the
6 execution and recording of the Re-recorded First Construction Deed of Trust.³² At a hearing on
7 June 5, 2013, Benham's objection was overruled and final compensation sought by Namba and
8 his professionals was approved. An Order Allowing Administrative Claims, Professional Fees
9 and Expenses, Trustee's Fees and Expenses was entered on June 21, 2013. Benham's appeal
10 from the order was dismissed for lack of standing on July 20, 2014.

11 On July 9, 2015, Namba filed his Chapter 7 Trustee's Final Account and Distribution
12 Report Certification That the Estate Has Been Fully Administered and Application to be
13 Discharged (TDR). On August 8, 2015, Benham objected to Namba's TDR, reiterated the
14 allegations of fraud by Security Pacific Bank and Fidelity, and requested that Namba's request to
15 be discharged as trustee be denied. Benham's objection was joined by MVE and BenIng
16 Company, L.L.C. The objection was not set for hearing, and the case remains pending before the
17 court.

18 L. Hagan's Final Report in Benham.

19 On August 6, 2015, Hagan filed his Amended Trustee's Final Report (TFR) in the
20 Benham case. Benham objected to Hagan's final report and request for compensation, alleging
21 that Hagan, like Namba, had not fulfilled his statutory duties as trustee because he had not
22 independently investigated Benham's claim of fraud against Security Pacific Bank and Fidelity
23 in conjunction with the execution and recording of the Re-recorded First Construction Deed of
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28 ³² Initial Opposition and Reply Regarding Trustee Jerry Namba's Final Report and Applications
for Compensation; Declarations of Erik Benham and Exhibits [Dkt. # 441].

1 Trust.³³ At a hearing on September 22, 2015, Benham's objection was overruled and final
2 compensation sought by Hagan and his professionals was approved. An Order Allowing
3 Administrative Claims, Professional Fees and Expenses and Trustee's Fees and Expenses was
4 entered on September 28, 2015, together with a separate Order Overruling Objections to
5 Amended Trustee's Final Report and Final Applications for Compensation and Reimbursement
6 of Expenses of Trustee and Professionals. Both orders were appealed by Benham on October 9,
7 2015.

8 M. Notice of Removal.

9 On November 4, 2015, MVE commenced this action against Nipomo and Costa Pacifica
10 in Case No. 15 CV 0600, Maria Vista Estates v. Mi Nipomo, LLC, et al., in the Superior Court of
11 California, County of San Luis Obispo. MVE's Complaint seeks a judgment declaring that the
12 Re-recorded First Construction Deed of Trust is void due to alleged fraud, that the foreclosure
13 sale thereunder is set aside, and that MVE is the owner of the impacted lots in the MVE Project.
14 As previously stated, the factual allegations in paragraphs 10-28 of MVE's Complaint are
15 substantively identical to the factual allegations in both paragraphs 12-30 of the complaint in the
16 Benham Adversary Proceeding and paragraphs 20-37 of the Sequoia Complaint.

17 On December 29, 2015, Nipomo and Costa Pacifica removed MVE's Complaint to this
18 court pursuant to 28 U.S.C. §§ 1441(a) and 1452(a), asserting that:

19 All claims for relief relating to the rights of Maria Vista in the property are core
20 proceedings. First, the claims alleged in the [Complaint] are property of the
21 bankruptcy estate as they involve pre-petition conduct, and all proceedings
22 regarding the sale or use of estate property are core proceedings. (11 U.S.C. §
23 157(b)(2)(M)). Second, the claims in the [Complaint] involve pre-petition liens
24 that were held against Maria Vista's bankruptcy estate, and require a
25 'determination of the validity, extent, or priority of liens' constitute core
26 proceedings. (11 U.S.C. § 157(b)(2)(K)). Third, the claims are core proceedings

27 ³³ Initial Objections to Chapter 7 Trustee David R. Hagan's Final Account and Distribution
28 Report Certification that the Estate Has Been Fully Administered and Application to be
Discharged; Request for Hearing [Dkt. # 756].

1 because they potentially impact the administration of Maria Vista’s bankruptcy
estate. (11 U.S.C. § 157(b)(2)(A) & (O)).³⁴

2 Nipomo and Costa Pacifica further assert that “[f]ederal question jurisdiction appears on the face
3 of the . . . [Complaint]” [because] “[t]he claims involve pre-petition conduct relating to property
4 of the Maria Vista bankruptcy estate and the impact of prior orders entered in the Maria Vista
5 bankruptcy case and the Benham Bankruptcy case.”³⁵

6 On January 21, 2016, MVE filed its motion to remand the action to state court pursuant to
7 28 U.S.C. § 1441(c), arguing that “the action seeks to quiet title to certain lots within the [MVE
8 Project] which were sold as part of a foreclosure on a fraudulent deed of trust”³⁶ and that the
9 bankruptcy court lacks subject matter jurisdiction because the claims made the basis of the
10 Complaint “were abandoned by the bankruptcy trustee when he knowingly abandoned any
11 interest that the bankruptcy estate had in the [MVE Project} despite the forgery allegations.”³⁷

12 On February 25, 2015, Nipomo filed a response in opposition to MVE’s Remand Motion, which
13 was joined by Costa Pacifica. MVE replied on March 3, 2016, at which time the evidentiary
14 record closed. After a hearing on March 10, 2016, the court continued MVE’s Remand Motion
15 to May 12, 2016, pending a ruling by the court.

16 II. DISCUSSION

17 Section 1447(c) states that a case must be remanded “[i]f at any time before final
18 judgment it appears that the district court lacks subject matter jurisdiction.” 28 U.S.C. § 1447(c).
19 Bankruptcy courts may also remand a claim or cause of action to the court from which it was
20 removed “on any equitable ground.” 28 U.S.C. § 1452(b). “This ‘any equitable ground’ remand
21 standard is an unusually broad grant of authority.” McCarthy v. Prince (In re McCarthy), 230
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24 ³⁴ Notice of Removal of Civil Action Pursuant to 28 U.S.C. Sections 1331, 1441 and 1452(a), at
25 4:12-20.

26 ³⁵ Id. at 22-24.

27 ³⁶ Plaintiff Maria Vista Estates’ Notice of Motion and Motion for Remand of Action to State
Court (“Remand Motion”), at 3:4-5.

28 ³⁷ Id. at 7:20-22.

1 B.R. 414, 417 (9th Cir. BAP 1999). “It subsumes and reaches beyond all of the reasons for
2 remand under nonbankruptcy removal statutes.” Id.

3 MVE urges a remand of MVE’s Complaint under 28 U.S.C. § 1447(c) because,
4 according to MVE, the removed action is not a civil proceeding that arises in or arises under title
5 11 nor is it related to MVE’s bankruptcy case. MVE argues that the “action seeks to quiet title to
6 certain lots within the [MVE Project] which were sold as part of a foreclosure on a fraudulent
7 deed of trust.”³⁸ MVE further argues that the alleged fraud was “made known to the bankruptcy
8 trustee, Jerry Namba, who elected to abandon any and all interest in the [MVE Project].”³⁹ MVE
9 reasons that “[t]his action must be remanded to State Court as the bankruptcy estate no longer
10 has any interest in the [MVE Project] (which encompasses the lots which are the subject of this
11 action) because the bankruptcy trustee, with knowledge of the forgery claims which are the
12 subject of the State Court action, abandoned all interest in the Project back in 2011.”⁴⁰ MVE
13 concludes that the removed action will have no impact on the administration of MVE’s
14 bankruptcy estate because the “bankruptcy estate stands to gain nothing from [MVE’s]
15 lawsuit[.]”⁴¹ Namba has filed his final report, and “[t]he only apparent reason the bankruptcy is
16 not closed is due to [a] pending appeal.”⁴²

17 “Bankruptcy courts have subject matter jurisdiction over proceedings ‘arising under title
18 11, or arising in or related to cases under title 11.’ In re Wilshire Courtyard, 729 F.3d 1279,
19 1285 (9th Cir. 2013) (quoting 28 U.S.C. § 1334(b)). “[J]urisdiction must be analyzed on the
20 basis of the pleadings filed at the time of removal without reference to subsequent amendments.”

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24 ³⁸ Plaintiff Maria Vista Estates’ Notice of Motion and Motion for Remand of Action to State
Court (“Remand Motion”), 3:4-5.

25 ³⁹ Id. at 3:18-19.

26 ⁴⁰ Id. at 4:5-10.

27 ⁴¹ Id. at 7:23-24.

28 ⁴² Id. at 8:13-15.

1 Sparta Surgical Corp. v. Nat'l Ass'n of Securities Dealers, Inc., 159 F.3d 1209, 1213 (9th Cir.
2 1998).

3 MVE's Complaint seeks a judgment setting aside the Re-recorded First Construction
4 Deed of Trust and the foreclosure sale thereunder as void, and declaring that MVE is the owner
5 of the impacted lots in the MVE Project. MVE's Complaint alleges a claim under state law that
6 ostensibly affects title to real property, but that fact alone does not mandate a remand. At the
7 heart of the dispute is the issue of whether or not MVE owns the claim made the basis of the
8 Complaint and whether it possesses the requisite standing to pursue such claim to judgment.
9 MVE argues that it owns the claim based upon this court's Abandonment Order. Nipomo and
10 Costa Pacifica disagree, asserting that the fraud claim alleged in the Complaint was outside the
11 scope of the Abandonment Order and within the scope of the release obtained by the FDIC
12 Parties upon approval of the Settlement Agreement. Disposition of this pivotal issue involves
13 the interpretation and enforcement of orders entered in the proper administration of the MVE and
14 Benham bankruptcy estates which remain pending before this court, including but not limited to,
15 (1) the Sale Order; (2) the Settlement Agreement; and (3) the Abandonment Order.

16 Bankruptcy courts have jurisdiction to construe and enforce their own orders. See
17 Beneficial Trust Deeds v. Franklin (In re Franklin), 802 F.2d 324, 326 (9th Cir. 1986) ("Simply
18 put, bankruptcy courts retain jurisdiction to construe their own orders if they are to be capable of
19 monitoring whether those orders are ultimately executed in the intended manner."). "Requests
20 for bankruptcy courts to construe their own orders must be considered to arise under title 11 if
21 the policies underlying the Code are to be effectively implemented." Franklin, 802 F.2d at 326.
22 Accordingly, this court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§
23 157(b), 1334(b), 1441(a) and 1452(a). Because the determination of MVE's right to pursue the
24 fraud claim alleged in the Complaint as a basis to quiet title is inextricably intertwined with the
25 interpretation and enforcement of this court's prior orders, this is a "core" proceeding under 28
26 U.S.C. § 157(b)(2)(A) and (O). Venue is appropriate in this court. 28 U.S.C. § 1409(a).

27 Having determined that the court has subject matter jurisdiction, the court declines to
28 remand for want of jurisdiction pursuant to 28 U.S.C. § 1447(c). In determining whether to

1 remand a proceeding to state court on equitable grounds, courts in the Ninth Circuit have
2 considered the following fourteen non-exclusive factors (the Enron factors):

- 3 1. The effect or lack thereof on the efficient administration of the estate;
- 4 2. The extent to which state law issues predominate over bankruptcy issues;
- 5 3. The difficult or unsettled nature of applicable law;
- 6 4. The presence of a related proceeding commenced in state court or other non-
7 bankruptcy proceeding;
- 8 5. The jurisdictional basis, if any, other than 28 U.S.C. § 1334;
- 9 6. The degree of relatedness or remoteness of the proceeding to the main bankruptcy
10 case;
- 11 7. The substance rather than the form of an asserted core proceeding;
- 12 8. The feasibility of severing state law claims from core bankruptcy matters to allow
13 judgments to be entered in state court with enforcement left to the bankruptcy
14 court;
- 15 9. The burden on the bankruptcy court's docket;
- 16 10. The likelihood that the commencement of the proceeding in the bankruptcy court
17 involves forum shopping by one of the parties;
- 18 11. The existence of a right to jury trial;
- 19 12. The presence in the proceeding of non-debtor parties;
- 20 13. Comity; and
- 21 14. The possibility of prejudice to the other parties in the action.

22 Citigroup, Inc. v. Pac. Inv. Mgmt. Co., LLC (In re Enron Corp.), 296 B.R. 505, 508 n.2 (C.D.
23 Cal. 2003); see Cedar Funding, 419 B.R. at 820 n.18. The fact “[t]hat the matter is core does not
24 preclude a discretionary remand, as provided for in 28 U.S.C. § 1452(b).” Nilsen v. Neilson (In
25 re Cedar Funding, Inc.), 419 B.R. 807, 820 (9th Cir. BAP 2009).

26 MVE's Remand Motion does not mention 28 U.S.C. § 1452(b) nor contain any critical
27 analysis of the specific Enron factors that weigh in favor of remand. Nipomo's opposition
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1 discusses the Enron factors, and the court agrees with Nipomo that factors 1-4, 6-8, 10-12, and
2 14 weigh against a remand of this proceeding to state court.

3 First and foremost, retention of the proceeding will promote judicial economy and
4 facilitate the efficient administration of the MVE bankruptcy case. This court is intimately
5 familiar with MVE’s bankruptcy, Benham’s bankruptcy, the adversary proceedings that have
6 been commenced in each of the bankruptcy cases, and the appeals that have been made by MVE
7 and/or Benham from orders or judgments entered in the respective cases or proceedings. The
8 salient issue of whether MVE owns the claim made the basis of the Complaint and possesses the
9 requisite standing to pursue such claim turns on an interpretation of orders previously entered by
10 this court. As Nipomo points out, this “Court has issued several decisions that affect the same
11 issues that are being put in controversy in this action – namely, whether the [Security Pacific
12 Bank] lien was invalid for fraud. The parties are entitled to rely on the finality of those decisions
13 and not have them undermined by conflicting outcomes in other proceedings.”⁴³ “[J]udicial
14 economy, convenience, fairness and comity will sometimes best be served by the retention of
15 jurisdiction by the federal court, particularly in instances where . . . the federal court has
16 performed a substantial amount of legal analysis that would need to be repeated by the state court
17 if the case were remanded.” Millar v. Bay Area Rapid Transit District, 236 F.Supp.2d 1110,
18 1116 (N.D. Cal. 2002).

19 There are no unsettled or difficult issues of state law that might weigh in favor of remand
20 nor are there related proceedings other than previous actions heard by this court. Moreover, the
21 state law issues raised in MVE’s Complaint do not predominate given the fundamental issue of
22 whether MVE owns the claim made the basis of the Complaint and has the requisite standing to
23 pursue the claim at all. It would be difficult to sever such issue because MVE’s right to pursue
24 the fraud claim as a basis to quiet title is inextricably intertwined with the interpretation and
25 enforcement of this court’s prior orders. The non-debtor parties to this adversary proceeding
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28 ⁴³ Opposition of Defendant Mi Nipomo, LLC to Motion for Remand of Action to State Court
 (“Nipomo Opposition”), at 2:1-4.

1 oppose remand, and the possibility of prejudice given the likelihood of inconsistent rulings
2 weighs heavily against remand.

3 Nipomo contends that “[q]uiet title and declaratory relief actions are equitable actions
4 with no right to a jury trial[.]” citing Caira v. Offner, 126 Cal.App.4th 12, 25 (2005). The court
5 expresses no opinion on the issue of whether or not MVE may be entitled to a jury trial in this
6 adversary proceeding, but the mere fact that MVE has demanded a jury trial does not, of and by
7 itself, require remand. Having determined that the bankruptcy court has subject matter
8 jurisdiction, the interests of judicial economy and efficiency are better served by the bankruptcy
9 court retaining jurisdiction over this adversary proceeding until the action is ready for trial. As
10 the Ninth Circuit explained in Sigma Micro Corp. v. Healthcentral.com (In re
11 Healthcentral.com), 504 F.3d 775 (9th Cir. 2007):

12 [A] Seventh Amendment jury trial right does not mean the bankruptcy court must
13 instantly give up jurisdiction and that the case must be transferred to the district
14 court. Instead, the bankruptcy court is permitted to retain jurisdiction over the
15 action for pre-trial matters. . . . [T]wo rationales justify this holding.

16 First, allowing the bankruptcy court to retain jurisdiction over pre-trial matters,
17 does not abridge a party’s Seventh Amendment right to a jury trial. A bankruptcy
18 court’s pre-trial management will likely include matters of “discovery,” “pre-trial
19 conferences,” and routine “motions,” which obviously do not diminish a party’s
20 right to a jury trial. Moreover, even if a bankruptcy court were to rule on a
21 dispositive motion, it would not affect a party’s Seventh Amendment right to a
22 jury trial, as these motions merely address whether a trial is necessary at all.

23 Second, requiring that an action be immediately transferred to the district court
24 simply because of a jury trial right would run counter to our bankruptcy system.
25 Under our current system Congress has empowered the bankruptcy courts to
26 “hear” Title 11 actions, and in most cases enter relevant “orders.” As has been
27 explained before, this system promotes judicial economy and efficiency by
28 making use of the bankruptcy court’s unique knowledge of Title 11 and
29 familiarity with the actions before them. . . . Only by allowing the bankruptcy
30 court to retain jurisdiction over the action until trial is actually ready do we ensure
31 that our bankruptcy system is carried out.

32 Id. at 787-88 (emphasis in original).

33 MVE’s lack of consent to the entry of final orders or a judgment by the bankruptcy court
34 does not compel remand. To the extent that the claims made the basis of MVE’s complaint

1 might constitute non-core claims or “Stern claims,”⁴⁴ the bankruptcy court is authorized to hear
2 such matters and “submit proposed findings of fact and conclusions of law to the district court”
3 for entry of a final order or judgment by the district court “after considering the bankruptcy
4 judge’s proposed findings and conclusions and after reviewing de novo those matters to which
5 any party has timely and specifically objected.” 28 U.S.C. § 157(c)(1).

6 Comity does not require remand. MVE commenced the state court action on November
7 4, 2015. Nipomo and Costa Pacifica removed the case to this court shortly after being served
8 with the Complaint. The case was pending in state court for only 55 days prior to removal.
9 Discovery had not commenced nor were any motions pending at the time of removal.

10 Finally, the court’s interest in deterring forum shopping weighs against remand.
11 Although removal of the proceeding places a burden on this court’s docket at a time when the
12 MVE estate is nearly administered and the only issue preventing a final distribution and closing
13 of the case is Benham’s objection to Namba’s TDR, a remand would simply countenance efforts
14 by MVE and Benham to shop for a forum other than this court to hear this claim.

15 Because the relevant Enron factors as applied to the facts and circumstances of this
16 adversary proceeding weigh heavily against remand, the court will decline to remand the action
17 to state court pursuant to 28 U.S.C. § 1452(b).

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26 ⁴⁴ “These claims are called ‘Stern claims,’ so named after the Supreme Court’s decision in Stern
27 v. Marshall, ___ U.S., ___, 131 S.Ct. 2594, 180 L.Ed.2d 475 (2011). Stern claims are claims
28 ‘designated for final adjudication in the bankruptcy court as a statutory matter, but prohibited
from proceeding in that way as a constitutional matter.’” Mastro v. Rigby, 764 F.3d 1090, 1093
(9th Cir. 2014) (citation omitted).

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III. CONCLUSION

Based on the foregoing, the court will deny MVE's Remand Motion. A separate order will be entered consistent with this memorandum decision.

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Date: April 5, 2016



Peter H. Carroll
United States Bankruptcy Judge