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CLERK U.S. BANKRUPTCY COURT  
Central District of California  
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# NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
NORTHERN DIVISION

In re:	)	Case No. 9:07-bk-10362-PC
MARIA VISTA ESTATES, a California	)	Adversary No. 9:15-ap-01096-PC
General Partnership,	)	Chapter 7
Debtor.	)	
<hr/>		
MARIA VISTA ESTATES, a California	)	<b>MEMORANDUM RE: DEFENDANT</b>
General Partnership,	)	<b>MI NIPOMO, LLC'S MOTION TO</b>
Plaintiff,	)	<b>DISMISS ADVERSARY</b>
v.	)	<b>PROCEEDING WITH PREJUDICE</b>
MI NIPOMO, LLC, a Delaware limited	)	<b>AND DEFENDANT COSTA</b>
liability company, COSTA PACIFICA	)	<b>PACIFICA ESTATES HOMEOWNERS</b>
ESTATES HOMEOWNERS	)	<b>ASSOCIATION MOTION TO DISMISS</b>
ASSOCIATION, a California corporation,	)	<b>ADVERSARY PROCEEDING</b>
Defendants.	)	Date: March 10, 2016
	)	Time: 10:00 a.m.
	)	Place: Courtroom # 201
	)	1415 State Street
	)	Santa Barbara, CA 93101

On December 29, 2015, Defendants, Mi Nipomo, LLC (“Nipomo”) and Costa Pacifica Estates Homeowners Association (“Costa Pacifica”) removed to this court Case No. 15 CV 0600, Maria Vista Estates v. Mi Nipomo, LLC, et al., filed in the Superior Court of California, County of San Luis Obispo, on November 4, 2015, pursuant to 28 U.S.C. §§ 1331, 1334, 1441,

1 and 1452 and FRBP 9027.<sup>1</sup> Remand having been denied,<sup>2</sup> Nipomo and Costa Pacifica now seek  
2 dismissal of the First Amended Complaint for Declaratory Relief and to Quiet Title  
3 (“Complaint”) filed by Plaintiff, Maria Vista Estates (“MVE”), the Debtor in this chapter 7 case,  
4 pursuant to F.R.Civ.P. 12(b)(6). Having considered MVE’s Complaint and the exhibits attached  
5 thereto in light of the papers<sup>3</sup> and arguments of counsel, the court will grant the motions of  
6 Nipomo and Costa Pacifica and dismiss MVE’s Complaint without leave to amend based upon  
7 the following findings of fact and conclusions of law made pursuant to F.R.Civ.P. 52(a)(1), as  
8 incorporated into FRBP 7052 and applied to adversary proceedings in bankruptcy cases.  
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12 <sup>1</sup> Unless otherwise indicated, all “Code,” “chapter” and “section” references are to the  
13 Bankruptcy Code, 11 U.S.C. §§ 101-1330. “Rule” references are to the Federal Rules of  
14 Bankruptcy Procedure (“FRBP”), which make applicable certain Federal Rules of Civil  
15 Procedure (“F.R.Civ.P.”). “LBR” references are to the Local Bankruptcy Rules of the United  
16 States Bankruptcy Court for the Central District of California (“LBR”).

17 <sup>2</sup> Order Denying Plaintiff Maria Vista Estates’ Motion for Remand of Action to State Court,  
18 [Dkt. # 44] entered April 5, 2016.

19 <sup>3</sup> The papers are: (a) Nipomo’s Motion to Dismiss Adversary Proceeding With Prejudice and  
20 Memorandum of Points and Authorities in Support Thereof (“Nipomo Motion”) [Dkt. # 10] filed  
21 January 15, 2016; (b) Request for Judicial Notice in Support of Motion to Dismiss Adversary  
22 Proceeding With Prejudice (“Nipomo RJN”) [Dkt. # 11] filed January 15, 2016; (c) Defendant  
23 Costa Pacifica Estates Homeowners Association Motion to Dismiss Adversary Proceeding and  
24 Joinder to Defendant Mi Nipomo, LLC’s Motion to Dismiss Adversary Proceeding;  
25 Memorandum of Points and Authorities in Support Thereof (“Costa Pacifica Motion”) [Dkt. #  
26 14] filed January 15, 2016; (d) Plaintiff Maria Vista Estates’ Opposition to Defendants’ Motions  
27 to Dismiss (“MVE’s Opposition”) [Dkt. # 26] filed February 25, 2016; (e) Plaintiff Maria Vista  
28 Estates’ Request for Judicial Notice in Support of Opposition to Defendants’ Motions to Dismiss  
29 (“MVE’s RJN”) [Dkt. # 26-1] filed February 25, 2016; (f) Plaintiff Maria Vista Estates’ Exhibits  
30 in Support of Opposition to Defendants’ Motions to Dismiss (“MVE’s RJN Exhibits”) [Dkt. #  
31 26-2] filed February 25, 2016; (g) Mi Nipomo, LLC’s Reply in Support of Motion to Dismiss  
32 Adversary Proceeding With Prejudice (“Nipomo Reply”) [Dkt. # 34] filed March 3, 2016; (h)  
33 Request for Judicial Notice in Support of Reply in Support of Motion to Dismiss Adversary  
34 Proceeding With Prejudice (“Nipomo Reply RJN”) [Dkt. # 35] filed March 3, 2016; and (i)  
35 Defendant Costa Pacifica Estates Homeowners Association’s Joinder in and to Defendant Mi  
36 Nipomo, LLC’s Reply in Support of Motion to Dismiss Adversary Proceeding With Prejudice  
37 [Dkt. # 36] filed March 3, 2016. The court grants the Nipomo RJN, MVE’s RJN, and the  
38 Nipomo Reply RJN.

1 I. STATEMENT OF FACTS

2 On November 4, 2015, MVE filed suit against Nipomo and Costa Pacifica in Case No. 15  
3 CV 0600, Maria Vista Estates v. Mi Nipomo, LLC, et al., in the Superior Court of California,  
4 County of San Luis Obispo, seeking to quiet title to the following described real property in San  
5 Luis Obispo County, California:

6 APN Nos. 090-305-041, 090-307-002, 090-307-003, 090-307-004, 090-305-027  
7 (1860 Vista Del Pueblo, Nipomo, CA 93444;

8 APN No. 090-305-028 (1872 Vista Del Pueblo, Nipomo, CA 93444;

9 APN No. 090-305-029 (1884 Vista Del Pueblo, Nipomo, CA 93444;

10 APN No. 090-305-030 (1916 Vista Del Pueblo, Nipomo, CA 93444;

11 APN No. 090-305-031 (1932 Vista Del Pueblo, Nipomo, CA 93444;

12 APN No. 090-305-032 (1948 Vista Del Pueblo, Nipomo, CA 93444;

13 APN No. 090-305-033 (1964 Vista Del Pueblo, Nipomo, CA 93444

14  
15 APN No. 090-307-001 (a portion of the real property described in Grant Deed  
16 recorded as Instrument No. 2015023039 in the Real Property Records of San Luis  
17 Obispo County on May 13, 2015.);

18 APN Nos. 090-303-002, 090-303-003, and 090-303-004 (a portion of the real  
19 property described in Grant Deed recorded as Instrument No. 2015023039 in the  
20 Real Property Records of San Luis Obispo County on May 13, 2015);

21 APN No. 090-306-028 (1844 Vista Del Rio, Nipomo, CA 93444; and

22 APN No. 090-305-020 (the real property described in Grant Deed recorded as  
23 Instrument No. 2013057808 in the Real Property Records of San Luis Obispo  
24 County on October 11, 2013) (collectively, the "Subject Lots").

25 In its Complaint, MVE alleges, in pertinent part:

26 1. MVE, a California general partnership, owned and developed a 77-lot  
27 residential subdivision in Nipomo, California ("MVE Project"), which was to be  
28 built in three phases: (a) Phase I – 25 homes; (b) Phase II – 15 homes; and (c)  
Phase III – 37 homes.

2. In conjunction with the purchase of the land, MVE executed a note in the  
original principal sum of \$6,385,000 payable to Erik Benham ("Benham")

1 secured by a deed of trust lien evidenced by a Deed of Trust, Assignment of  
2 Rents, and Security Agreement (“Benham Deed of Trust”) dated March 18, 2003.

3 3. The Benham Deed of Trust, which is attached to the Complaint as Exhibit 1,  
4 was recorded as Instrument No. 2003040009 in the Real Property Records of San  
5 Luis Obispo County on April 18, 2003.

6 3. On or about December 28, 2004, MVE executed a note in the original principal  
7 sum of \$15,800,000 payable to Security Pacific Bank dated December 28, 2004  
8 (“Phase I Loan”) secured by a deed of trust lien evidenced by a Construction  
9 Deed of Trust (“First Construction Deed of Trust”) against the following  
10 described real property in the MVE Project:

11 Lot 1 and the “Remainder Lot” of Tract 1856, Phase 1 in the  
12 unincorporated area of the County of San Luis Obispo, State of  
13 California according to map recorded May 20, 2002 in Book 20,  
14 Page 12 of Maps in the Office of the County Recorder of said  
15 County.

16 5. The First Construction Deed of Trust, which is attached to the Complaint as  
17 Exhibit 3, was recorded as Instrument No. 2005001667 in the Real Property  
18 Records of San Luis Obispo County on January 7, 2005.

19 6. On May 24, 2005, the First Construction Deed of Trust was re-recorded by  
20 Security Pacific Bank to correct the legal description of the collateral securing  
21 MVE’s Phase I Loan (“Re-recorded First Construction Deed of Trust”). The Re-  
22 recorded First Construction Deed of Trust bore a second acknowledgment of the  
23 signatures of MVE’s general partners, Benham, as Managing Member of BenIng  
24 Company, L.L.C. and Mark Pender, as President of Pender Properties  
25 Incorporated, executed by Dianna Voss, a notary public employed by Fidelity  
26 National Title Company (“Fidelity”) dated May 16, 2005. Attached as Exhibit A  
27 to the Re-recorded First Construction Deed of Trust was the following  
28 “corrected” description of the collateral securing the Phase I Loan:

Parcel 1:

The remainder of Tract 1856, Phase I, in the unincorporated area  
of the County of San Luis Obispo, State of California, according to  
map recorded May 20, 2002, in Book 20, Page 12 of Maps, in the  
office of the County Recorder of said County.

Assessor’s Parcel No. 090-301-060

Parcel 2:

1 The remainder of Tract 1802, Phase I, in the unincorporated area  
2 of the County of San Luis Obispo, State of California, according to  
3 map recorded June 19, 2002, in Book 20, Page 17 of Maps, in the  
4 office of the County Recorder of said County.

Assessor's Parcel No. Portions of 090-301-062 and 063

5 7. The Re-recorded First Construction Deed of Trust, which is attached to the  
6 Complaint as Exhibit 4, was recorded as Instrument No. 2005042186 in the Real  
7 Property Records of San Luis Obispo County.

8 8. On or about November 2, 2005, MVE executed a note in the original principal  
9 sum of \$7,850,000 payable to Security Pacific Bank dated November 2, 2005  
10 ("Phase II Loan") secured by a deed of trust lien evidenced by a Construction  
11 Deed of Trust ("Second Construction Deed of Trust") against the following  
12 described real property in the MVE Project:

13 Lots 15, 16, 33 through 38 inclusive and 46 through 52 inclusive of  
14 tract 1802, Phase 2, in the County of San Luis Obispo, State of  
15 California, according to map recorded February 1, 2005 in Book  
16 25, Pages 36-46 of Maps, in the Office of the County Recorder of  
17 said County.

18 9. The Second Construction Deed of Trust, which is attached to the Complaint as  
19 Exhibit 5, was recorded as Instrument No. 2005100974 in the Real Property  
20 Records of San Luis Obispo County on December 2, 2005.

21 10. Neither Benham nor Pender signed the Re-Recorded First Construction Deed  
22 of Trust.

23 11. Security Pacific Bank and Fidelity "conspired to and did file a forged" Re-  
24 recorded First Construction Deed of Trust which "falsely and fraudulently  
25 increased the collateral" securing the Phase I Loan to include "all of Tract 1802,  
26 including the 15 lots in Phase II and 37 buildable lots comprising Phase III of the  
27 MVE Project."<sup>4</sup>

28 12. MVE "did not discover the misconduct by [Security Pacific Bank] and  
Fidelity until 2013."<sup>5</sup>

13. "If it were not for the fraudulent misconduct of [Security Pacific Bank] and  
Fidelity in encumbering all 77 lots of the MVE Project, lots 1-14, 17-32, 39-45

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<sup>4</sup> Complaint, 6:10-22.

<sup>5</sup> Id. at 8:26.

1 and 53-60 in Tract 1802 . . . would not have been subject to and would be free of  
2 the Bank’s deeds of trust.”<sup>6</sup>

3 14. “[B]ut for the fraudulent conduct of [Security Pacific Bank] and Fidelity, title  
4 to the [Subject Lots] would have remained with MVE and the [Subject Lots]  
5 would not have been subject to foreclosure.”<sup>7</sup>

6 On December 29, 2015, Nipomo and Costa Pacifica removed MVE’s Complaint to this  
7 court pursuant to 28 U.S.C. §§ 1441(a) and 1452(a). On January 21, 2016, MVE filed its motion  
8 to remand the action to state court pursuant to 28 U.S.C. § 1441(c), arguing that “the action seeks  
9 to quiet title to certain lots within the [MVE Project] which were sold as part of a foreclosure on  
10 a fraudulent deed of trust”<sup>8</sup> and that the bankruptcy court lacks subject matter jurisdiction  
11 because the claims made the basis of the Complaint “were abandoned by the bankruptcy trustee  
12 when he knowingly abandoned any interest that the bankruptcy estate had in the [MVE Project]  
13 despite the forgery allegations.”<sup>9</sup> By order entered on April 5, 2016, MVE’s Remand Motion  
14 was denied.

15 While MVE’s Remand Motion was pending, Nipomo and Costa Pacifica each moved to  
16 dismiss MVE’s Complaint under F.R.Civ.P. 12(b)(6). MVE’s Opposition was filed on February  
17 25, 2016, to which Nipomo and Costa Pacifica each replied on March 3, 2016. At the hearing on  
18 March 10, 2016, the court continued the matter to May 12, 2016, pending a ruling by the court.

## 19 II. DISCUSSION

20 “Bankruptcy courts have subject matter jurisdiction over proceedings ‘arising under title  
21 11, or arising in or related to cases under title 11.’ In re Wilshire Courtyard, 729 F.3d 1279,  
22 1285 (9th Cir. 2013) (quoting 28 U.S.C. § 1334(b)). This court has jurisdiction over this  
23 adversary proceeding pursuant to 28 U.S.C. §§ 157(b), 1334(b), 1446(a), and 1452(a). This

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25 <sup>6</sup> Id. at 8:7-10.

26 <sup>7</sup> Id. at 9:2-4.

27 <sup>8</sup> Plaintiff Maria Vista Estates’ Notice of Motion and Motion for Remand of Action to State  
28 Court (“Remand Motion”), at 3:4-5.

<sup>9</sup> Id. at 7:20-22.

1 matter is a core proceeding under 28 U.S.C. § 157(b)(2)(A) and (O).<sup>10</sup> Venue is appropriate in  
2 this court. 28 U.S.C. § 1409(a).

3 A. Standard for Dismissal Under Rule 12(b)(6).

4 Rule 12(b)(6) authorizes the court, upon motion of the defendant, to dismiss a complaint  
5 for failure to state a claim upon which relief can be granted.<sup>11</sup> F.R.Civ.P. 12(b)(6). “The  
6 purpose of F.R.Civ.P. 12(b)(6) is to enable defendants to challenge the legal sufficiency of  
7 complaints without subjecting themselves to discovery.” Rutman Wine Co. v. E.&J. Gallo  
8 Winery, 829 F.2d 729, 738 (9th Cir. 1987).

9 Under Rule 8(a), a complaint must contain “a short and plain statement of the claim  
10 showing that the pleader is entitled to relief.”<sup>12</sup> F.R.Civ.P. 8(a)(2). “[T]he pleading standard  
11 Rule 8 announces does not require ‘detailed factual allegations,’ but it demands more than an  
12 unadorned, the-defendant-unlawfully-harmed-me accusation.” Ashcroft v. Iqbal, 556 U.S. 662,  
13 678 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 554, 555 (2007)). “[A] complaint  
14 must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible  
15 on its face.’” Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at 570). “A claim has facial  
16 plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable  
17 inference that the defendant is liable for the misconduct alleged.” Iqbal, 556 U.S. at 678  
18 (quoting Twombly, 550 U.S. at 556). “[A] complaint [that] pleads facts that are ‘merely  
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21 <sup>10</sup> Bankruptcy courts have jurisdiction to construe and enforce their own orders. See Beneficial  
22 Trust Deeds v. Franklin (In re Franklin), 802 F.2d 324, 326 (9th Cir. 1986) (“Simply put,  
23 bankruptcy courts retain jurisdiction to construe their own orders if they are to be capable of  
24 monitoring whether those orders are ultimately executed in the intended manner.”). “Requests  
25 for bankruptcy courts to construe their own orders must be considered to arise under title 11 if  
26 the policies underlying the Code are to be effectively implemented.” Franklin, 802 F.2d at 326.  
27 Because the determination of MVE’s right to pursue the fraud claim alleged in the Complaint as  
28 a basis to quiet title is inextricably intertwined with the interpretation and enforcement of this  
court’s prior orders, this is a “core” proceeding under 28 U.S.C. § 157(b)(2)(A) and (O).

<sup>11</sup> Rule 12(b)(6) is applicable to adversary proceedings by FRBP 7012(b).

<sup>12</sup> Rule 8(a) is applicable to adversary proceedings by FRBP 7008(a).

1 consistent with' a defendant's liability . . . 'stops short of the line between possibility and  
2 plausibility of entitlement to relief.'" Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at 557).  
3 The trial court need not accept as true conclusory allegations in a complaint, or legal  
4 characterizations cast in the form of factual allegations. Twombly, 550 U.S. at 555-56.

5 "[S]tanding is a threshold question" the court must "resolve before proceeding to the  
6 merits." Los Angeles County Bar Ass'n v. Eu, 979 F.2d 697, 700 (9th Cir. 1992). "Article III  
7 standing requires the plaintiff to establish standing for each challenge he wishes to bring and  
8 each form of relief he seeks." Sacks v. Office of Foreign Assets Control, 466 F.3d 764, 771 (9th  
9 Cir. 2006). "To survive a Rule 12(b)(6) motion to dismiss, [the plaintiff] must allege facts in his  
10 [Complaint] that, if proven, would confer standing upon him." Id.

11 A Rule 12(b)(6) dismissal may be based on either the lack of a cognizable legal theory, or  
12 the absence of sufficient facts alleged under a cognizable legal theory. Johnson v. Riverside  
13 Healthcare Sys., 534 F.3d 1116, 1121 (9th Cir. 2008). A claim cannot be plausible when it has  
14 no legal basis.

15 B. Court's Inquiry is Not Limited to the Allegations of the Complaint.

16 "In deciding Rule 12(b)(6) motions, courts are not strictly limited to the four corners of  
17 complaints." Outdoor Cent., Inc. v. GreatLodge.com, Inc., 643 F.3d 1115, 1120 (8th Cir. 2011).  
18 Courts may consider "matters incorporated by reference or integral to the claim, items subject to  
19 judicial notice, matters of public record, orders, items appearing in the record of the case, and  
20 exhibits attached to the complaint whose authenticity is unquestioned; these items may be  
21 considered by the [court] without converting the motion into one for summary judgment."  
22 Wright & Miller, Federal Practice and Procedure: Civil 3d § 1357, at 376 (2004). See, e.g., U.S.  
23 v. Ritchie, 342 F.3d 903, 908 (9th Cir. 2003) ("A court may . . . consider certain materials –  
24 documents attached to the complaint, documents incorporated by reference into the complaint, or  
25 matters of judicial notice – without converting the motion to dismiss into a motion for summary  
26 judgment."); Sears, Roebuck & Co. v. Metropolitan Engravers, Ltd., 245 F.2d 67, 70 (9th Cir.  
27 1956) ("[J]udicial notice may be taken of a fact to show that a complaint does not state a cause of  
28 action."); Branch v. Tunnell, 14 F.3d 449, 454 (9th Cir. 1994) ("[W]e hold that documents

1 whose contents are alleged in the complaint and whose authenticity no party questions, but  
2 which are not physically attached to the pleading, may be considered in ruling on a Rule 12(b)(6)  
3 motion to dismiss.”), cert. denied, 512 U.S. 1219 (1994); Barapind v. Reno, 72 F.Supp.2d 1132,  
4 1141 (E.D. Cal. 1999) (“Matters of public record may be considered, including pleadings, orders,  
5 and other papers filed with the court or records of administrative bodies.”); Roe v. Unocal Corp.,  
6 70 F.Supp.2d 1073, 1075 (C.D. Cal. 1999) (“[E]ven if a document is neither submitted with the  
7 complaint nor explicitly referred to in the complaint, the . . . court may consider the document in  
8 ruling on a motion to dismiss so long as the complaint necessarily relies on the document and the  
9 document’s authenticity is not contested.”).

10 C. MVE’s First Cause of Action to Quiet Title Must Be Dismissed for Failure to State a Claim  
11 Upon Which Relief Can Be Granted.

12 To state a cause of action to quiet title under California law, a plaintiff must allege:

- 13 a. A description of the property that is the subject of the action. . . . In the case  
14 of real property, the description shall include both its legal description and its  
15 street address or common designation, if any.
- 16 b. The title of the plaintiff as to which a determination under this chapter is  
17 sought and the basis of the title. . . .
- 18 c. The adverse claims to the title of the plaintiff against which a determination is  
19 sought.
- 20 d. The date as of which the determination is sought. If the determination is  
21 sought as of a date other than the date the complaint is filed, the complaint shall  
22 include a statement of the reasons why a determination as of that date is sought.
- 23 e. A prayer for the determination of the title of the plaintiff against the adverse  
24 claims.

25 Cal. Civ. Proc. Code § 761.020. While MVE may have addressed each of these elements in its  
26 Complaint, the court must determine whether MVE has pled facts sufficient to allow the court to  
27 draw a reasonable inference that MVE has standing to assert its quiet title claim and is entitled to  
28 the relief sought. See Iqbal, 556 U.S. at 678; Sacks, 466 F.3d at 771. The plausibility of MVE’s  
quiet title claim depends on the viability of its allegation that it owns and possesses “title to the

1 Subject Lots,”<sup>13</sup> as well as the fraud cause of action which forms the basis of MVE’s claim that  
2 record title in Nipomo or Costa Pacifica in one or more of the Subject Lots should be set aside.

3 The record in MVE’s bankruptcy case belies MVE’s contention in its Complaint that it  
4 did not discover the fraud claim discussed in paragraphs 10 through 31 of its Complaint until  
5 2013. Indeed, MVE now concedes that the fraud claim made the basis of the Complaint arose  
6 out of events that preceded the filing of MVE’s chapter 11 petition on March 23, 2007, and that  
7 the fraud claim was property of MVE’s bankruptcy estate after March 23, 2007.<sup>14</sup> Equally  
8 unavailing is MVE’s argument in its opposition that it owns the fraud claim asserted in the  
9 Complaint because “these events were made known to [MVE’s] bankruptcy trustee, Jerry  
10 Namba, who elected to abandon any and all interest in the [MVE Project]” to MVE in 2011.<sup>15</sup>  
11 That contention is also belied by the record in MVE’s bankruptcy case.

12 1. MVE’s Bankruptcy Case

13 On March 23, 2007, MVE filed a voluntary petition for reorganization under chapter 11  
14 of the Bankruptcy Code in the above referenced case. MVE involved a “single asset real estate”  
15 as defined in § 101(51B). In the schedules filed on April 6, 2007, MVE disclosed the MVE  
16 Project as its only significant asset. Prior to the petition date, Security Pacific Bank had filed suit  
17 to foreclose its liens against the MVE Project in Case No. CV061009, Security Pacific Bank v.  
18 Maria Vista Estates, et. al, in the Superior Court of California, County of San Luis Obispo  
19 (“Judicial Foreclosure Action”). On April 14, 2008, Security Pacific Bank filed a motion  
20 seeking relief from the automatic stay under § 362(d)(3) to continue the Judicial Foreclosure  
21 Action. MVE opposed the motion. On May 12, 2008, the court entered an order granting  
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25 <sup>13</sup> “The claims made by, and the conduct of, Defendants, as described above, cloud Plaintiff’s  
26 title to the Subject Lots, and prevent Plaintiff’s full use and enjoyment of the Subject Lots,  
27 hinder its right to unrestricted alienation thereof, and threaten Plaintiff with eventual loss of all  
28 its rights of ownership of the Subject Lots.” Complaint, 9:16-19 (emphasis added).

<sup>14</sup> MVE’s Opposition, 3:1-2.

<sup>15</sup> Id. at 3:2-3; 13-16.

1 Security Pacific Bank relief from the stay to enforce its rights against its collateral in the MVE  
2 Project.<sup>16</sup>

3 On June 9, 2008, Security Pacific Bank filed an Emergency Motion for Order Correcting  
4 the Legal Description of the “Phase I” Property in the Order Granting Security Pacific Bank  
5 Relief From the Automatic Stay.<sup>17</sup> Security Pacific Bank asserted, in pertinent part, that: (1) the  
6 legal description of the Phase I property contained in the Stay Order was based on an incorrect  
7 legal description contained in the First Construction Deed of Trust; and (2) the Re-recorded First  
8 Construction Deed of Trust was recorded to correct the legal description of Security Pacific  
9 Bank’s collateral. Benham responded to the motion on June 11, 2008, stating that Security  
10 National Bank is “trying to establish a security interest that I have disputed and that this court  
11 specifically withheld ruling on.”<sup>18</sup> On June 23, 2008, the court overruled Benham’s objection  
12 and entered an amended order granting Security Pacific Bank relief from the stay to enforce its  
13 rights with respect to its collateral in the MVE Project.<sup>19</sup> On July 9, 2008, the court converted  
14 MVE’s chapter 11 case to a case under chapter 7<sup>20</sup> and Jerry Namba (“Namba”) was appointed  
15 as trustee.<sup>21</sup>

16 2. Benham’s Bankruptcy Case.

17 On June 24, 2008, Benham filed a voluntary petition under chapter 11 in Case No. 9:08-  
18 bk-11432, In re Erik Benham, Debtor. On November 7, 2008, Security Pacific Bank was closed  
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21 <sup>16</sup> Order Granting Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (“Stay  
Order”) [Dkt. # 93] entered on May 12, 2008.

22 <sup>17</sup> Dkt. # 105.

23 <sup>18</sup> Erik Benham’s Memorandum of Points and Authorities in Opposition to Security Pacific  
24 Bank’s Emergency Motion [Dkt. # 107] filed June 11, 2008, at 9:11-13.

25 <sup>19</sup> Amended Order Granting Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362  
26 (“Amended Stay Order”) [Dkt. # 115], Exhibit 1.

27 <sup>20</sup> Order Converting Case to Chapter 7 [Dkt. # 118] entered July 9, 2008.

28 <sup>21</sup> Notice of Appointment of Trustee and Fixing of Bond; Acceptance of Appointment as Interim  
Trustee [Dkt. # 131] filed July 29, 2008.

1 by the California Department of Financial Institutions and the Federal Deposit Insurance  
2 Corporation was appointed as receiver for Security Pacific Bank (“FDIC”). The FDIC  
3 succeeded to ownership of the assets of the bank, including all rights, claims, interests and liens  
4 of Security Pacific Bank with respect to the obligations of MVE and Benham. On November 12,  
5 2009, Benham’s chapter 11 case was converted to a case under chapter 7.<sup>22</sup> Brad D. Krasnoff,  
6 who was appointed as trustee upon conversion, resigned on December 4, 2009, and David R.  
7 Hagen (“Hagan”) was appointed as successor trustee.<sup>23</sup>

8 3. Adversary No. 9:09-ap-01051.

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

21 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, as a  
22 consequence of execution and recordation of that certain “Substitution of Trustee  
23 and Full Reconveyance,” dated July 23, 2007, and recorded in the Office of the  
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25 <sup>22</sup> Order Converting Case to Chapter 7 [Dkt. # 260] entered November 12, 2009.

26 <sup>23</sup> Notice of Appointment of Trustee and Fixing of Bond; Acceptance of Appointment as Interim  
27 Trustee [Dkt. # 274] filed December 17, 2009.

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

1 County Recorder of San Luis Obispo, on October 9, 2007, as Instrument No.  
2 2007066511 (the "Full Reconveyance"), to the fullest extent described or  
3 otherwise referenced in the Full Reconveyance, that certain Deed of Trust,  
4 Assignment of Rents, and Security Agreement," dated March 18, 2003, and  
5 recorded on April 18, 2003, in the Office of the County Recorder of San Luis  
6 Obispo as Instrument No. 2003040009 (the "Original Benham Deed of Trust"), as  
7 modified and amended by that certain "Modification of Deed of Trust," recorded  
8 in the Office of the County Recorder of San Luis Obispo as Instrument No.  
9 2003087433 (the Original Benham Deed of Trust, as modified by the  
10 "Modification of Deed of Trust" is hereinafter referred to as the "Benham Deed of  
11 Trust"), the Benham Deed of Trust was canceled and extinguished, and the  
12 Benham Deed of Trust is of no force or effect; and it is further

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ORDERED, ADJUDGED AND DECREED that each of (1) the execution, (2) the  
delivery, and (3) the recordation of that certain "Agreement Cancelling  
Reconveyance and Reinstating Deed of Trust and Promissory Note" recorded on  
January 16, 2008, in the Office of the County Recorder of San Luis Obispo as  
Instrument No. 2008002289, is (x) void, (y) of no force or effect, and (z) does not  
serve to create, maintain, or reinstate any lien on the Property . . . .<sup>25</sup>

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

4. Adversary No. 9:09-ap-01197.

Despite the Judgment entered in Adversary No. 9:09-ap-01051 eleven days earlier,  
Benham filed a complaint in Adversary No. 9:09-ap-01197, Benham v. Jerry Namba, as Chapter  
7 Trustee for Debtor Maria Vista Estates on August 31, 2009, asserting that the execution and  
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."<sup>26</sup> On September 22, 2009, the FDIC intervened and  
thereafter moved to dismiss Benham's complaint. Before the motion was heard, Benham's  
bankruptcy case was converted to chapter 7 and Hagan was appointed trustee. On December 3,  
2010, Hagan, as the real party in interest, filed a statement of position in response to the FDIC's

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<sup>25</sup> Judgment [Dkt. # 37] entered August 10, 2009, at 2:5-22.

<sup>26</sup> Adversary Complaint to Determine Validity of Lien and Cancel Erroneous Reconveyance [sic]  
[Dkt. # 1] filed August 31, 2009, at 4:8-10.

1 motion to dismiss stating that “the claims asserted in the Adversary Proceeding are assets of the  
2 Benham Bankruptcy Case, and are now under the exclusive administration of Hagen as Chapter  
3 7 Trustee,” and that such claims “are the subject of a pending settlement between Hagan and  
4 various third parties, including, but not limited to the FDIC.”<sup>27</sup> On February 11, 2011, the court  
5 entered an order denying the FDIC’s motion and abstaining from further consideration of the  
6 adversary proceeding “as a consequence of (a) the pendency of the Appeal, and (b) the apparent  
7 lack of standing of Benham to commence and prosecute [the] adversary proceeding and the  
8 putative claims asserted therein.”<sup>28</sup> The order was not appealed.

9 5. Hagan’s Sale Motion.

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

14 (i) any and all rights, claims, interests, causes of action, demands of the Debtor,  
15 the Estate and the Trustee against (1) Security Pacific Bank (“Bank”)’ the Federal  
16 Deposit Insurance Corporation, as Receiver for Security Pacific Bank (“FDIC”),  
17 (3) Multibank 2009-1 Res-ADC Venture, LLC (“Multibank”), and (4) Fidelity  
18 National Title Company (“Fidelity”), and each and any of their respective parents,  
19 subsidiaries, affiliates, successors and assigns, past and present officers, directors,  
20 owners, members, representatives, agents, attorneys, and insurers, and each of  
21 them, and any of their respective successors and assigns, past or present  
22 (collectively, the “FDIC Parties”), or against the rights, title or interests of any of  
23 the FDIC Parties in and to approximately 84 acres of land owned by the MVE  
24 bankruptcy estate located in the County of San Luis Obispo, State of California,  
25 on which MVE partially completed the construction of single family dwellings  
26 (the “Real Property”);

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

31 <sup>28</sup> Order Re Motion to Dismiss Plaintiff Erik Benham’s Adversary Complaint to Determine  
32 Validity of Lien and Cancel Erroneous Reconveyance [Dkt. # 43] entered on February 11, 2011,  
33 at 3:2-5.

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

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

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

12 (v) any and all rights, claims, causes of action, demands, and powers, including  
13 any arising under section 544 of the Bankruptcy Code, of the Debtor and the  
14 Estate (1) relating to the Loan and the Additional Loan, or (2) to affect, avoid,  
15 subordinate, modify, or otherwise alter the First Construction Deed of Trust, the  
Re-Recorded First Construction Deed of Trust, the Second Construction Deed of  
Trust, or each of them, and any of the rights and liens created thereby.<sup>29</sup>

16 Benham objected to the Sale Motion by response filed on December 22, 2010, and appeared in  
17 opposition to the Sale Motion at the hearing thereon. On January 10, 2011, the court overruled  
18 Benham's objection and approved a sale of the Rights, Claims and Interests to Nipomo  
19 Acquisition as the successful bidder. An order approving the sale was entered on January 25,  
20 2011.<sup>30</sup> Benham filed a notice of appeal. On April 23, 2013, Benham's appeal of the Sale Order  
21 was ultimately dismissed by the Ninth Circuit for want of prosecution. Benham's petition for a  
22 writ of certiorari to the United States Supreme Court was denied on January 27, 2014.

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24 <sup>29</sup> Notice of Motion and Motion for Order Approving (A) Sale of Rights, Claims and Interests  
25 Free and Clear of All Liens, Claims, Interests and Encumbrances; and (B) Settlement and  
26 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.

27 <sup>30</sup> Order Approving (A) Sale of Rights, Claims and Interests Free and Clear of All Liens, Claims,  
28 Interests and Encumbrances; and (B) Settlement and Compromise of Estates Rights, Claims and  
Interests Pursuant to Bankruptcy Rule 9019 ("Sale Order") [Dkt. # 477].

1           6. Adversary No. 9:10-ap-01171.

2           While the Sale Motion was pending, Benham filed a complaint in Adversary No. 9:10-  
3 ap-01171, Benham v. Federal Deposit Insurance Corporation, et al., in the MVE bankruptcy case  
4 on June 22, 2010 (“Benham Adversary Proceeding”), alleging, in pertinent part, that the Re-  
5 recorded First Construction Deed of Trust owned by the FDIC, as successor to Security Pacific  
6 Bank, was a document forged by Security Pacific Bank, that Fidelity recorded the document with  
7 knowledge of the forgery, and that the FDIC “continues to collude and maintain the fraud of the  
8 Bank and Fidelity as receiver for Bank to the financial devastation of MVE.”<sup>31</sup> Benham sought  
9 damages and other relief based upon the 13 claims alleged in the complaint, including fraud,  
10 conversion, civil conspiracy, breach of fiduciary duty, negligence, bankruptcy fraud, forgery, and  
11 obstruction of justice. On July 26, 2010, the FDIC and Fidelity each filed a motion under  
12 F.R.Civ. P. 12(b)(6) seeking dismissal of the complaint under F.R.Civ.P. 12(b)(6) because  
13 Benham lacked the requisite standing to pursue the claims made the basis of the complaint.  
14 Benham opposed the motions claiming derivative standing in that the complaint ostensibly was  
15 filed on behalf of all unsecured creditors of the MVE bankruptcy case.

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

21           7. Foreclosure Under the First Construction Deed of Trust and Re-recorded First  
22 Construction Deed of Trust.

23           On November 24, 2008, the FDIC filed Proof of Claim # 45 in the amount of  
24 \$22,535,906.49 for the balance due under the Phase I Loan and Phase II Loan in the MVE  
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27 <sup>31</sup> 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 bankruptcy case. On February 8, 2010, the FDIC transferred Proof of Claim # 45 to Multibank.<sup>32</sup>  
2 On August 17, 2010, Sequoia Financial Solutions IV, LLC (“Sequoia”) purchased the Phase I  
3 Loan from Multibank.<sup>33</sup>

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

9 8. MVE Abandonment Order.

10 On March 11, 2011, Namba filed and served a notice of his intention “to abandon the  
11 estate’s interest, if any, in the entire 84 acre Maria Vista Estates project, located at 555 Vista Del  
12 Rio, Nipomo, California (the “Property”).”<sup>34</sup> In his notice, Namba stated:

13 The Trustee has concluded that all of the Property is burdensome to the estate and  
14 is of inconsequential value or benefit to the estate. Specifically, the Property does  
15 not have any equity that can be liquidated for the benefit of the estate. Secured  
16 claims against the Property exceed \$23,000,000 and proposed purchase offers for  
17 the Property have not exceeded \$13,000,000. In addition, the estate lacks  
18 sufficient funds to continue to insure the Property and to maintain 24-hour  
19 security. Therefore, based on the foregoing, the Trustee contends pursuant to his  
20 business judgment, that the abandonment of the estate’s interest in the Property, if  
21 any, is in the best interests of the estate and its creditors.<sup>35</sup>

22 MVE and Benham were served with the notice. Neither filed opposition nor requested a hearing.  
23 On April 28, 2011, the court entered an order authorizing Namba “to abandon the estate’s  
24 interest, if any, in the entire 84 acre Maria Vista Estates project, located at 555 Vista Del Rio,

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25 <sup>32</sup> Request for Issuance of Notice of Transfer of Claim Pursuant to F.R.B.P. 3001(e) [Dkt. # 336]  
26 filed April 28, 2010.

27 <sup>33</sup> Request for Issuance of Notice of Transfer of Claim Pursuant to F.R.B.P. 3001(e) [Dkt. # 366]  
28 filed December 22, 2010.

<sup>34</sup> Notice of Chapter 7 Trustee’s Intention to Abandon Assets [Dkt. # 379] (“Abandonment  
Notice”), at 1:25-26.

<sup>35</sup> Id. at 2:1-8.

1 Nipomo, California” and stating that “such abandonment shall be deemed effective without  
2 further order of the Court.”<sup>36</sup> The Abandonment Order was not appealed and is a final order.

3 9. Settlement of MVE Estate’s § 506(c) Claim.

4 On June 16 2011, Namba filed a motion in the MVE bankruptcy case seeking approval of  
5 a settlement with Sequoia, Fidelity, and RES-CA MV Estates, LLC ( the “FDIC Parties”) under  
6 the terms of which (1) the MVE bankruptcy estate would receive the sum of \$200,000 in  
7 settlement of its claim against the FDIC Parties for recovery of the reasonable, necessary costs  
8 and expenses incurred in preserving the MVE Project for the benefit of the FDIC Parties; and (2)  
9 in consideration therefor, the FDIC Parties would receive a release of claims from the MVE  
10 bankruptcy estate.<sup>37</sup> The Settlement Agreement between Namba and the FDIC Parties executed  
11 by Namba on June 8, 2011, attached to the Settlement Motion as Exhibit “1,” provided in  
12 pertinent part:

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

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

25 Trustee hereby warrants and represents that he has not transferred, sold, alienated,  
26 pledged or otherwise encumbered, and will not, transfer, sell, alienate or  
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28 <sup>36</sup> Order Authorizing Chapter 7 Trustee’s Abandonment of Real Property Asset (“Abandonment  
Order”) [Dkt. # 381], at 2:1-4.

<sup>37</sup> Chapter 7 Trustee’s Motion for Order Authorizing Compromise of Estates’ 11 U.S.C. §  
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.<sup>38</sup>

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).”<sup>39</sup> 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.”<sup>40</sup> 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.”<sup>41</sup> The  
19 Settlement Order was not appealed and is a final order.  
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23 <sup>38</sup> Id. at Exhibit 1, 4-5.

24 <sup>39</sup> 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 <sup>40</sup> 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 <sup>41</sup> 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 10. The Fraud Claim Alleged in MVE's Complaint Was Not Abandoned to MVE by the  
2 Abandonment Order

3 (a) Property of the Estate

4 Upon the filing of a bankruptcy petition, all property in which the debtor possesses a  
5 legal or equitable interest at the commencement of the case becomes property of the bankruptcy  
6 estate. 11 U.S.C. § 541(a)(1). "Legal claims that accrued before the filing of the bankruptcy  
7 petition . . . are property that become part of the bankruptcy estate." Seneca v. First Franklin Fin.  
8 Corp., 2011 WL 3235647, \*2 (S.D. Cal. 2011). A trustee in bankruptcy "is the representative of  
9 the estate," and "has the capacity to sue or be sued." 11 U.S.C. § 323(a) & (b). A chapter 7  
10 debtor may not prosecute a cause of action belonging to the bankruptcy estate unless the claim  
11 has been abandoned by the trustee. Rowland v. Novus Fin. Corp., 949 F.Supp. 1447, 1453 (D.  
12 Haw. 1996).

13 (b) Debtor's Duty to Disclose

14 In exchange for a discharge, debtors are required to file comprehensive and accurate  
15 schedules and statements and to cooperate with the trustee in the administration of the estate.  
16 See 11 U.S.C. § 521(a)(1) & (3). A debtor's duty to file complete and accurate schedules is  
17 absolute. See Cusano v. Klein, 264 F.3d 936, 946 (9th Cir. 2001); In re Mohring, 142 B.R. 389,  
18 394 (Bankr. E.D. Cal. 1992), aff'd, 153 B.R. 601 (9th Cir. BAP 1993), aff'd, 24 F.3d 247 (9th  
19 Cir. 1994). Full and comprehensive disclosure is critical to the integrity of the bankruptcy  
20 process. See, e.g., Heitkamp v. Whitehead (In re Whitehead), 278 B.R. 589, 594 (Bankr. M.D.  
21 Fla. 2002) ("The veracity of the debtor's Statement is absolutely essential to the successful  
22 administration of the Bankruptcy Code"); In re Bohrer, 266 B.R. 200, 201 (Bankr. N.D. Cal.  
23 2001) ("A debtor may not adopt a cavalier attitude toward . . . the accuracy of his schedules by  
24 arguing that they are not precise and correct"). "The proper 'operation of the bankruptcy system  
25 depends on honest reporting.'" Mohring, 142 B.R. at 389, quoting Payne v. Wood, 775 F.2d  
26 202, 205 (7th Cir. 1985).

27 Schedules and statements are signed under penalty of perjury. FRBP 1008. Debtors are  
28 presumed to have read the schedules and statements before signing the documents, and are  
responsible for their contents. Carpenter v. Fanaras (In re Fanaras), 263 B.R. 655, 667 (Bankr.

1 D. Mass. 2001). Whether or not the documents are prepared by an attorney, debtors bear an  
2 independent responsibility for the accuracy of the information contained in their schedules and  
3 statements. See AT&T Universal Card Servs. Corp. v. Duplante (In re Duplante), 215 B.R. 444,  
4 447 n.8 (9th Cir. BAP 1997) (“Schedules and statements of financial affairs are sworn  
5 statements, signed by debtors under penalty of perjury” and “[a]dopting a cavalier attitude  
6 toward the accuracy of the schedules and expecting the court and creditors to ferret out the truth  
7 is not acceptable conduct by debtors or their counsel”).

8 Errors and omissions in a debtor’s schedules and statements may be corrected by  
9 amendment. Debtors have the right to amend their petition, lists, schedules or statement of  
10 affairs as a matter of course at any time until the case is closed. FRBP 1009(a) (emphasis  
11 added). Amendments under Rule 1009(a) are not only liberally allowed, but no court approval is  
12 required. Martinson v. Michael (In re Michael), 163 F.3d 526, 529 (9th Cir. 1998); In re  
13 Bowden, 254 B.R. 907, 909 (Bankr. D. Idaho 2000). Consequently, inaccurate or incomplete  
14 schedules and any ambiguities contained therein are construed against the debtor. Mohring, 142  
15 B.R. at 394-95; see Hyman, 967 F.2d at 1319 n.6 (“Given that the debtor controls the schedules,  
16 we construe any ambiguity therein against him”). Unscheduled property remains property of the  
17 estate even after the case is closed. Pace v. Battley (In re Pace), 146 B.R. 562, 564-66 (9th Cir.  
18 BAP 1992), aff’d, 17 F.3d 395 (9th Cir. 1994).

19 (c) Abandonment

20 “After notice and a hearing, the trustee may abandon any property of the estate that is  
21 burdensome to the estate or that is of inconsequential value and benefit to the estate.” 11 U.S.C.  
22 § 554(a). Alternatively, any property scheduled under § 521(a)(1) “not otherwise administered  
23 at the time of the closing of a case is abandoned to the debtor and administered for purposes of  
24 section 350,” unless the court orders otherwise. 11 U.S.C. § 554(c) (emphasis added).  
25 “‘Abandonment’ is a term of art with special meaning in the bankruptcy context.” Catalano v.  
26 Commissioner of Internal Revenue, 279 F.3d 682, 685 (9th Cir. 2002). “It is the formal  
27 relinquishment of the property at issue from the bankruptcy estate.” Id. “Abandonment requires  
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1 affirmative action by the trustee or some other evidence of the intent to abandon the asset.”

2 Pace, 146 B.R. at 566.

3 Property must be formally scheduled to be subject to abandonment. Jeffrey v. Desmond,  
4 70 F.3d 183, 186 (1st Cir. 1995). “It is not enough that the trustee learns of the property through  
5 other means; the property must be scheduled” as required by § 521(a)(1). Vreugdenhill v.  
6 Navistar Int’l Transp. Corp., 950 F.2d 524, 526 (8th Cir. 1991). Moreover, “a trustee’s intent to  
7 abandon an asset must be clear and unequivocal.” Chartschlaa v. Nationwide Mut. Ins. Co., 538  
8 F.3d 116, 123 (2d Cir. 2008). “There is simply no such concept of ‘assumed abandonment[.]’”  
9 Jeffrey, 70 F.3d at 186. “Absent an unambiguous intent to abandon estate property, the proposed  
10 abandonment is not effective.” Chartschlaa, 538 F.3d at 124.

11 MVE asserts that the Abandonment Order impliedly included the fraud claim alleged in  
12 the Complaint. It did not. The court agrees with Nipomo that “[t]he estate’s interest in the real  
13 property, which is disclosed in Schedule A, is distinct from its interest in causes of action,”  
14 which MVE was required to disclose in Schedule B, including the fraud claim forming the basis  
15 of MVE’s Complaint.<sup>42</sup> Namba’s Abandonment Notice does not refer to MVE’s fraud claim nor  
16 give creditors and parties in interest notice of an intention to abandon any cause of action in  
17 addition to the 84 acres of land comprising the MVE Project. The Abandonment Order clearly  
18 and unambiguously authorized Namba to abandon only “the estate’s interest, if any, in the entire  
19 84 acre Maria Vista Estates project, located at 555 Vista Del Rio, Nipomo, California.” “[T]here  
20 is no informal abandonment of property of the estate.” Curren v. Great Am. Ins. Co., (In re Hat),  
21 363 B.R. 123, 138 (Bankr. E.D. Cal. 2007). Because MVE’s alleged fraud claim was neither  
22 identified specifically in either the Abandonment Notice or the Abandonment Order,<sup>43</sup> MVE’s  
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24 <sup>42</sup> Nipomo Reply, 2:28-3:2.

25 <sup>43</sup> The court makes no finding that MVE’s fraud claim was unscheduled, but it does note that  
26 MVE’s fraud claim was not disclosed with particularity in Schedule B(21). In Schedule B(21),  
27 MVE disclosed the Judicial Foreclosure Action as a lawsuit pending on the petition date, noting  
28 that MVE “has cross-claimed for lender liability.” The disclosure does not mention fraud nor  
provide information regarding any cause of action forming the basis for the cross-claim. As  
previously stated, a lack of information in the schedules is construed against the debtor.

1 fraud claim was outside the scope of the Abandonment Order and remained property of the estate  
2 after April 28, 2011. See Seneca, 2011 WL 3235647, \*2 (“[T]he Notice merely states that the  
3 bankruptcy trustee intended to abandon Plaintiff’s real property because there was little or no  
4 equity in the property and preservation of the assets was burdensome to the bankruptcy estate; it  
5 says nothing of abandonment of Plaintiff’s stated legal claims arising from transactions  
6 concerning that property.”).

7 Not only was MVE’s fraud claim not abandoned, it is clear that Namba had knowledge of  
8 MVE’s fraud claim, investigated the claim, and took action to administer the claim as an asset of  
9 the estate. MVE’s fraud claim was settled by Namba pursuant to the Settlement Agreement  
10 approved by Settlement Order under the terms of which the FDIC Parties received a full release  
11 of all claims arising in any way out of the MVE Project, and/or security interests asserted or  
12 taken in the property comprising the MVE Project, including the fraud claim asserted in MVE’s  
13 Complaint, in consideration for payment of the sum of \$200,000 to the estate .<sup>44</sup>

14 Dismissal of MVE’s Complaint is warranted by the clear and unambiguous language of  
15 the Abandonment Order and Settlement Agreement. “An action must be prosecuted in the name  
16 of the real party in interest.”<sup>45</sup> F.R.Civ.P. 17(a)(1). Because MVE’s does not own the fraud  
17 claim made the basis of MVE’s Complaint, MVE is not the real party in interest with standing to  
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19 Mohring, 142 B.R. at 394-95. Furthermore, a chapter 7 debtor who fails to schedule a pre-  
20 petition claim lacks prudential standing to pursue the claim because it belongs to the bankruptcy  
21 estate. Dunmore v. United States, 358 F.3d 1107, 1112 (9th Cir. 2004). “Judicial estoppel will  
22 be imposed when the debtor has knowledge of enough facts to know that a potential cause of  
23 action exists during the pendency of the bankruptcy, but fails to amend his schedules or  
24 disclosure statements to identify the cause of action as a contingent asset.” Hamilton v. State  
Farm Fire & Cas. Co., 270 F.3d 778, 784 (9th Cir. 2001).

24 <sup>44</sup> This conclusion is bolstered by the Trustee’s Final Report which confirms that “[t]he FDIC  
25 had been negotiating with the Trustee for a settlement of all claims” since 2009, and that a  
26 settlement was reached with the FDIC under the terms of which “THE BANKRUPTCY  
27 ESTATE WILL RECEIVE \$200,000 AND THE TRUSTEE RELEASES ALL CLAIMS  
28 ARISING FROM THE DEVELOPMENT AND/OR SECURITY INTERESTS ASSERTED IN  
THE DEVELOPMENT.” Trustee’s Final Report (TFR) [Dkt. # 436], filed March 15, 2013, at 5,  
7.

<sup>45</sup> Rule 17(a)(1) is applicable to adversary proceedings by FRBP 7017.

1 prosecute the fraud claim alleged in the Complaint. Having determined that the allegations and  
2 supporting documents in the Complaint do not support a claim for fraud, the quiet title claim is  
3 fatally defective. Accordingly, the court will grant the motions and dismiss MVE's quiet title  
4 cause of action.

5 D. MVE's Second Cause of Action for Declaratory Relief Must Be Dismissed for Failure to  
6 State a Claim Upon Which Relief Can Be Granted.

7 MVE's Second Cause of Action seeks declaratory relief. MVE seeks "a judicial  
8 determination of its and Defendants' respective rights and a declaration or order quieting title in  
9 Plaintiff and ruling that Defendants have no right, title or ownership in the Subject Lots."<sup>46</sup> "A  
10 declaratory judgment is not a theory of recovery." Commercial Union Ins. Co. v. Walbrook Ins.  
11 Co., Ltd., 41 F.3d 764, 775 (1st Cir. 1994). "[W]here a plaintiff has alleged a substantive cause  
12 of action, a declaratory relief claim should not be used as a superfluous 'second cause of action  
13 for the determination of identical issues' subsumed within the first." Jensen Quality Loan Serv.  
14 Corp., 702 F.Supp.2d 1183, 1189 (E.D. Cal. 2010) (citation omitted). MVE's Second Cause of  
15 Action for declaratory relief is entirely duplicative of its quiet title claim. Having determined  
16 that its quiet title claim should be dismissed, the court will dismiss MVE's claim for declaratory  
17 relief as redundant.

18 E. Leave to Amend Will Be Denied.

19 Rule 15(a)(2) of the Federal Rules of Civil Procedure states that "[t]he court should freely  
20 give leave [to amend] when justice so requires." F.R.Civ.P. 15(a)(2).<sup>47</sup> If a complaint lacks  
21 facial plausibility, a court must grant leave to amend unless it is clear that the complaint's  
22 deficiencies cannot be cured by amendment. See, e.g., Steckman v. Hart Brewing, Inc., 143 F.3d  
23 1293, 1298 (9th Cir. 1998) ("Although there is a general rule that parties are allowed to amend  
24 their pleadings, it does not extend to cases in which any amendment would be an exercise in  
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26 <sup>46</sup> Complaint, 10:8-10.

27 <sup>47</sup> Rule 15(a)(2) is applicable to adversary proceedings by virtue of FRBP 7015.  
28

1 futility.”); Rutman Wine, 829 F.2d at 738 (“Denial of leave to amend is not an abuse of  
2 discretion where the pleadings before the court demonstrate that further amendment would be  
3 futile.”). It is clear to the court at this juncture that the deficiencies in MVE’s Complaint cannot  
4 be cured by amendment. Accordingly, MVE’s Complaint will be dismissed without leave to  
5 amend.

6 III. CONCLUSION

7 Based on the foregoing, the court will grant the motions of Nipomo and Costa Pacifica to  
8 dismiss MVE’s Complaint without leave to amend. A separate order will be entered consistent  
9 with this memorandum decision.

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24 Date: April 13, 2016



25 Peter H. Carroll  
26 United States Bankruptcy Judge  
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