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2 UNITED STATES DISTRICT COURT  
3 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
4 OAKLAND DIVISION  
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6 RENATA FRIED, trustee of the Renata Fried  
7 Family Trust,

8 Plaintiff,

9 vs.

10 WASHINGTON MUTUAL BANK, et al,

11 Defendants.

Case No: C 09-1049 SBA

**ORDER GRANTING  
WITHDRAWAL OF ATTORNEY  
AND CONTINUING HEARING ON  
DEFENDANTS' MOTION**

12 Plaintiff Renata Fried filed this action as "trustee of the Renata Fried Family Trust."  
13 (Docket No. 1 at 1.) On March 10, 2010, this Court dismissed this action, under Federal Rule  
14 of Civil Procedure 4(m), due to Plaintiff's failure to prosecute. (Docket No. 31.) On June 18,  
15 2010, Defendants JP Morgan Chase Bank, N.A., and California Reconveyance Company  
16 ("Defendants") filed a Motion for a Court Order to Expunge Notice of Pendency of Action and  
17 for Attorneys Fees and Costs ("Defendants' Motion"). (Docket No. 32.) That matter is  
18 currently scheduled for hearing on September 28, 2010.

19 On August 26, 2010, Plaintiff filed a Stipulation to Withdraw Attorney, indicating that  
20 Plaintiff and her counsel, Jonathan Fried, have agreed to the withdrawal of Mr. Fried as  
21 Plaintiff's attorney. (Docket No. 35.) Plaintiff's counsel had initially filed a motion to  
22 withdraw, along with a Stipulation to Withdraw Attorney, on October 14, 2009. (Docket No.  
23 25.) Also on August 26, 2010, Plaintiff, through her counsel, filed a Reply to Motion to  
24 Expunge Notice of Pendency of Action. (Docket No. 34.) That "Reply" does not address the  
25 merits of Defendants' Motion. Rather, it explains to this Court why Plaintiff had to "fire" Mr.  
26 Fried due to the fact that he "discovered he was a material witness and possibly an adverse  
27 party." (Id. at 1.) Plaintiff also indicates that she intends to file a "pro se reply" in opposition  
28 to Defendants' Motion. (Id. at 3.)

1           However, there is no indication in the record that Plaintiff, acting as trustee, is the actual  
2 beneficial owner of the claims being asserted. Of note, her complaint fails to include any  
3 factual allegations regarding the nature of the Renata Fried Family Trust. “It is well  
4 established that the privilege to represent oneself *pro se* provided by [28 U.S.C.] § 1654 is  
5 personal to the litigant and does not extend to other parties or entities.” Simon v. Hartford  
6 Life, Inc., 546 F.3d 661, 664 (9th Cir. 2008). “Consequently, in an action brought by a *pro se*  
7 litigant, the real party in interest must be the person who by substantive law has the right to be  
8 enforced.” Id. (internal quotation marks omitted); see also C.E. Pope Equity Trust v. U.S., 818  
9 F.2d 696, 697-98 (9th Cir. 1987) (trustee attempting to represent a trust *pro se* was not,  
10 pursuant to 28 U.S.C. § 1654, a “party” conducting his “own case personally” as he was not the  
11 beneficial owner of the claims being asserted); York v. U.S., 1998 WL 919875, at 1 (S.D. Cal.  
12 1998) (“In C.E. Pope, the Ninth Circuit held that a party could not appear in pro per on behalf  
13 of a trust when the record does not indicate that the party is the actual beneficial owner of the  
14 claims.”). Accordingly,

15           IT IS HEREBY ORDERED THAT:

- 16           1. Pursuant to the August 26, 2010 Stipulation to Withdraw Attorney, Jonathan  
17 Fried is no longer counsel of record for Plaintiff and shall be terminated in ECF.
- 18           2. Mr. Fried shall immediately serve Plaintiff with a copy of this Order and shall  
19 thereafter file a proof of service to confirm the same.
- 20           3. Plaintiff is advised that she cannot appear *pro se* on behalf of a trust unless she  
21 indicates that she is the actual beneficial owner of the asserted claims. Therefore, if Plaintiff is  
22 indeed acting in that capacity, and should Plaintiff wish to file a *pro se* opposition to  
23 Defendants’ Motion, she is directed to submit a declaration along with her opposition  
24 establishing that she is the actual beneficial owner of the asserted claims. Otherwise,  
25 Plaintiff’s opposition must be filed through an attorney.
- 26           4. Regardless of whether filed *pro se* or through an attorney, Plaintiff’s opposition,  
27 if any, to Defendants’ Motion shall be filed by October 15, 2010. The failure to timely file an  
28 opposition may be construed as a consent to the granting of the motion.

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5. Any reply by Defendants shall be filed by October 29, 2010.

6. The September 28, 2010 hearing on Defendants' Motion for a Court Order to Expunge Notice of Pendency of Action and for Attorneys Fees and Costs is CONTINUED to November 16, 2010 at 1:00 p.m. The Court, in its discretion, may decide the motion without oral argument, pursuant to Federal Rule of Civil Procedure 78(b), in which case no appearance for the motion will be necessary. The parties are advised to check the Court's website to determine whether a court appearance is required.

IT IS SO ORDERED.

Dated: September 15, 2010

  
SAUNDRA BROWN ARMSYRONG  
United States District Judge