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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE FRANCISCO MOLINA JR. AND
JOSEPHINE MOLINA.

No. C-10-0575 SBA (EMC)

**ORDER DENYING DEBTORS’
MOTION TO COMPEL**

(Docket No. 14)

Debtors the Molinas have filed a motion to compel responses to subpoenas which they issued to Creditor Wells Fargo Bank, N.A. Having considered the parties’ briefs and accompanying submissions, as well as the oral arguments presented at the hearing on June 30, 2010, the Court hereby **DENIES** the Molinas’ motion.

As the Court ruled at the hearing on the motion, a denial is appropriate for the following reasons. First, a motion to compel is premature because the assigned judge in the case has not yet made a determination as to whether the reference to the bankruptcy court should be withdrawn. *See* 28 U.S.C. § 157(d); Bankr. L.R. 5011-2. In other words, the assigned judge has not yet determined that she will exercise jurisdiction over the case.

Second, because Wells Fargo is a party to the action, the Molinas should have sought documents via a Rule 34 document request, and not a Rule 45 subpoena. *See* Fed. R. Civ. P. 34(a) (providing, in relevant part, that “[a] party may serve on *any other party* a request within the scope of Rule 26(b) . . . to produce and permit the requesting party . . . to inspect, copy, test, or sample . . . any designated documents”).

1 Finally, it does not appear from the record that, prior to filing the motion to compel, the
2 Molinas met and conferred with Wells Fargo about the discovery dispute in a manner that satisfies
3 the applicable rules. *See* Fed. R. Civ. P. 37(a)(1) (providing that a motion to compel “must include a
4 certification that the movant has in good faith conferred or attempted to confer with the person or
5 party failing to make disclosure or discovery in an effort to obtain it without court action”); Civil
6 Local Rule 37-1(a). Although the Molinas asserted at the hearing that they had attempted to meet
7 and confer, they did not certify such in the papers they submitted.

8 Accordingly, the motion to compel filed by the Molinas is denied. The Court notes that it
9 shall not entertain any other discovery dispute until the assigned judge has made a determination as
10 to whether to exercise jurisdiction over the case.

11 This order disposes of Docket No. 14.

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13 IT IS SO ORDERED.

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15 Dated: July 2, 2010

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EDWARD M. CHEN
United States Magistrate Judge

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE FRANCISCO MOLINA JR. AND
JOSEPHINE MOLINA.

No. C-10-0575 SBA (EMC)

CERTIFICATE OF SERVICE

_____/

I, the undersigned, hereby certify that I am an employee in the U.S. District Court, Northern District of California. On the below date, I served a true and correct copy of the attached, by placing said copy/copies in a postage-paid envelope addressed to the person(s) listed below, by depositing said envelope in the U.S. Mail; or by placing said copy/copies into an inter-office delivery receptacle located in the Office of the Clerk.

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Oakland, CA 94604

United States District Court
For the Northern District of California

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Dated: July 2, 2010

RICHARD W. WIEKING, CLERK

By: /s/ Leni Doyle
 Leni Doyle
 Deputy Clerk