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2 UNITED STATES DISTRICT COURT
3 FOR THE NORTHERN DISTRICT OF CALIFORNIA
4 OAKLAND DIVISION
5

6 IN RE FRANCISCO MOLINA, JR., et al.,
7 Debtors.

Case No: CV 10-0575 SBA
[Bankruptcy Petition 09-71787]

8 **ORDER DENYING DEBTORS'**
9 **MOTION FOR WITHDRAWAL OF**
10 **REFERENCE**

11
12 This matter is presently before the Court on the pro se Motion for Withdrawal of
13 Reference filed by Debtors Francisco Molina, Jr., and Josephine Molina on February 10, 2010.
14 (Docket No. 1.) Having read and considered the papers filed in connection with this matter and
15 being fully informed, the Court hereby DENIES the motion for the reasons set forth below.
16 The Court, in its discretion, finds this matter suitable for resolution without oral argument. See
17 Fed.R.Civ.P. 78(b).

18 **I. PROCEDURAL BACKGROUND**

19 Debtors Francisco Molina, Jr., and Josephine Molina (“Debtors”) filed a Chapter 7
20 bankruptcy case on December 9, 2009. (Docket No. 1.) In that proceeding, Debtors filed an ex
21 parte motion to void a lien placed on their home by one of their creditors, Wells Fargo, on the
22 basis that Wells Fargo had allegedly committed “fraud upon the court.” (Id.) On January 5,
23 2010, Judge Randall Newsome issued an order denying Debtors’ motion. (Id.)

24 On January 15, 2010, Debtors filed in their bankruptcy proceeding a “MOTION TO
25 WITHDRAW REFERENCE, as to Void the Wells Fargo Liens Against Debtors’ House for
26 Fraud by Wells Fargo Bank,” “pursuant to FRCP Rule 9(b) Fraud Mistake, Conditions of
27 Mined (sic).” (Id.) Under Bankruptcy Court Local Rule 5011-2(a), their motion to withdraw
28 reference was transmitted to this Court. (Id.) On February 19, 2010, Debtors filed in this

1 Court a “complaint” against Wells Fargo, essentially restating their motion for withdrawal of
2 reference. (Docket No. 3.) The gravamen of Debtors’ fraud claim in their withdrawal papers is
3 that “plaintiff discovered at the Chapter 7 debt review a fraudulent charge to Plaintiff/ Debtor”
4 by Wells Fargo, and that “a charge of \$201,665.57 was piled upon Plaintiff/Debtor without his
5 consent or knowledge.” (*Id.*) On March 31, 2010, Debtors filed a “motion for entry of default
6 judgment” against Wells Fargo on the ground that it failed to answer their complaint. (Docket
7 No. 10.)

8 On March 24, 2010, the clerk of the court entered a declination of default. (Docket No.
9 9.) On March 31, 2010, Debtors again filed a “motion for default” against Wells Fargo.
10 (Docket No. 10.) No default has been entered. On April 2, 2010, Debtors filed a “first
11 amended complaint” restating the contents of their initial motion for withdrawal of reference,
12 and adding an affirmative claim under the Truth in Lending Act (“TILA”), 15 U.S.C. 1601, *et*
13 *seq.*, as well as claims for constructive fraud and for punitive damages. (Docket No. 11.)¹
14 Wells Fargo filed its opposition to Debtors’ motion for withdrawal of reference on April 7,
15 2010. Thereafter, Debtors filed a “Motion for Clear Error of Review of ‘Wells Fargo
16 Opposition to Debtor’s Motion for Withdrawal of Reference,’” which this Court liberally
17 construes as Debtors’ reply to Wells Fargo’s opposition to the withdrawal motion. (Docket
18 No. 13, filed April 12, 2010.)

19 On April 30, 2010, Debtors filed a “Motion to Compel Responses of Subpoenas to
20 Produce Documents,” seeking discovery responses from Wells Fargo. This case was then
21 referred to Magistrate Judge Chen for discovery purposes. After a hearing on Debtors’ motion
22 to compel, Judge Chen issued an order denying Debtors’ motion because, among other reasons,
23 the motion was premature as this Court had not yet ruled on Debtors’ motion to withdraw
24 reference to the bankruptcy court. (Docket No. 22, filed July 2, 2010.)

25
26 ¹ As indicated, this action arises from Debtors’ motion to withdraw reference, filed
27 originally in their bankruptcy proceeding and transmitted to this Court, per the procedures
28 established in 28 U.S.C. § 157. (Docket No. 1.) Debtors have also filed a “complaint” and “first
amended complaint” restating their reasons for seeking withdrawal. (Docket Nos. 3, 11.) These
filings are liberally construed as a collective motion for withdrawal of reference.

1 Subsequently, on July 6, 2010, Debtors filed in this Court a “Motion to Withdraw
2 Reference Pursuant to 28 U.S.C. § 157(d).” (Docket No. 23.) By that motion, Debtors again
3 ask this Court to withdraw the reference to the bankruptcy court, and argue that “Full
4 Discovery in District Court is needed to address our Complaint’s first and foremost contention
5 is that plaintiff discovered fraudulent charges to Plaintiff/Debtor.” (*Id.*) Debtors further
6 indicate that they “seek solution to the July 2, 2010 ... Order Denying Debtor’s Motion to
7 Compel Responses as premature” (*Id.*)

8 **II. LEGAL STANDARD**

9 Federal courts have original jurisdiction over civil proceedings arising in or related to
10 bankruptcy cases. 28 U.S.C. § 1334(a); *In re McGhan*, 288 F.3d 1172, 1179 (9th Cir. 2002).
11 The district court may refer such matters to a bankruptcy judge. 28 U.S.C. § 157(a); see also
12 N.D. Cal. B.L.R. 5011-1(a) (referring bankruptcy cases under Title II and civil proceedings
13 arising thereunder to the bankruptcy court). Section 157 “classifies matters as either ‘core
14 proceedings,’ in which the bankruptcy court ‘may enter appropriate orders and judgments,’ or
15 ‘non-core proceedings,’ which the bankruptcy court may hear but for which it may only submit
16 proposed findings of fact and conclusions of law to the district court for de novo review.” *Sec.*
17 *Farms v. International Broth. of Teamsters, Chauffers, Warehousemen & Helpers*, 124 F.3d
18 999, 1008 (9th Cir. 1997) (quoting 28 U.S.C. § 157). “Actions that do not depend on
19 bankruptcy laws for their existence and that could proceed in another court are considered
20 ‘non-core.’” *Id.*

21 A reference to the bankruptcy court may be subject to a permissive or mandatory
22 withdrawal, depending on the circumstances presented. See 28 U.S.C. § 157(d). A court may
23 consider a motion for withdrawal of reference only if it is timely. *Id.* “A motion to withdraw is
24 timely if it was made as promptly as possible in light of the developments in the bankruptcy
25 proceeding.” *Sec. Farms*, 124 F.3d at 1007, n.3 (internal quotation marks omitted).²

26
27 ² Wells Fargo does not dispute that Debtors’ motion was timely filed. Indeed, Debtors
28 initially filed this motion with the bankruptcy court on January 15, 2010, less than two months after
their December 9, 2009 Chapter 7 filing.

1 As indicated, withdrawals under section 157(d) may be permissive or mandatory. With
2 respect to permissive withdrawal, “[t]he district court may withdraw, in whole or in part, any
3 case or proceeding referred under this section, on its own motion or on timely motion of any
4 party, for cause shown.” 28 U.S.C. § 157(d). “In determining whether cause exists, a district
5 court should consider the efficient use of judicial resources, delay and costs to the parties,
6 uniformity of bankruptcy administration, the prevention of forum shopping, and other related
7 factors.” Sec. Farms, 124 F.3d at 1008. District courts should also consider whether the matter
8 is core or non-core, “since it is upon this issue that questions of efficiency and uniformity will
9 turn.” In re Orion Pictures Corp., 4 F.3d 1095, 1101 (2nd Cir. 1993) (explaining “the fact that
10 a bankruptcy court’s determination on non-core matters is subject to de novo review by the
11 district court could lead the latter to conclude that in a given case unnecessary costs could be
12 avoided by a single proceeding in the district court. Conversely, hearing core matters in a
13 district court could be an inefficient allocation of judicial resources given that the bankruptcy
14 court generally will be more familiar with the facts and issues.”).

15 Withdrawal is mandatory under Section 157(d) where “the [district] court determines
16 that resolution of the proceeding requires consideration of both title 11 and other laws of the
17 United States regulating organizations or activities affecting interstate commerce.” 28 U.S.C.
18 § 157(d). In determining whether a case satisfies section 157(d)’s mandatory withdrawal
19 provision, a court should consider whether the case requires “substantial and material
20 consideration of non-bankruptcy federal law.” Sec. Farms, 124 F.3d at 1008. By contrast,
21 permissive withdrawal does not hinge on the presence of substantial and material questions of
22 non-bankruptcy federal law. Id.

23 The burden of establishing the propriety of withdrawing the reference is on the party
24 seeking withdrawal. FTC v. First Alliance Mortgage Co., 282 B.R. 894, 902 (C.D. Cal. 2001).

25 **III. DISCUSSION**

26 **A. Permissive Withdrawal**

27 In liberally construing Debtors’ moving papers, the only matter that they seek to
28 withdraw from the bankruptcy court is their challenge to Wells Fargo’s lien. Indeed, Debtors’

1 initial withdrawal motion was entitled “MOTION TO WITHDRAW REFERENCE, as to Void
2 the Wells Fargo Liens Against Debtors’ House for Fraud by Wells Fargo Bank.” (Docket No.
3 1.) Moreover, those same fraud allegations formed the basis for Debtors’ unsuccessful
4 challenge before the bankruptcy court to Wells Fargo’s lien. (Docket No. 1.) Notably, Debtors
5 do not indicate any other aspect of their bankruptcy proceeding that they desire to be
6 withdrawn from the bankruptcy court.

7 Debtors’ challenge to the lien of their creditor, Wells Fargo, is a “core” proceeding.
8 Specifically, 28 U.S.C. § 157(b)(2) lists various types of proceedings deemed by Congress to
9 be core proceedings. Sections 157(b)(2)(A)-(C) provide that core proceedings include “(A)
10 matters concerning the administration of the estate; (B) allowance or disallowance of claims
11 against the estate or exemptions from property of the estate ..., (C) counterclaims by the estate
12 against persons filing claims against the estate.” Wells Fargo’s lien is a claim against Debtors’
13 estate in the Chapter 7 bankruptcy proceeding. Moreover, Debtors’ affirmative assertions of
14 fraud can be construed as “counterclaims” against Wells Fargo. In fact, Debtors explain that
15 the allegedly fraudulent charges were “discovered at the Chapter 7 debt review,” which
16 indicates that Debtors’ current allegations are tied to the bankruptcy laws and related
17 proceedings. (Docket No. 3.)

18 Having found that Debtors’ challenge to Wells Fargo’s lien is a “core” matter, the Court
19 must determine whether Debtors have shown cause for withdrawal of this matter. Again, a
20 district court should consider the efficient use of judicial resources, delay and costs to the
21 parties, uniformity of bankruptcy administration, the prevention of forum shopping, and other
22 related factors. Sec. Farms, 124 F.3d at 1008.

23 One primary factor weighing against withdrawal is the prevention of forum shopping.
24 Debtors are clearly unsatisfied with the bankruptcy court’s denial of their motion to void Wells
25 Fargo’s lien, and are effectively seeking reconsideration of that denial by this Court. This
26 conclusion is bolstered by the fact that Debtors also seek discovery from Wells Fargo in this
27 Court relating to the lien, and have even filed a motion to compel such discovery.

1 The remaining factors also counsel against granting Debtors’ withdrawal motion. As
2 explained, the bankruptcy court already rejected Debtors’ challenge to the lien. To retry that
3 very same matter would require the parties to educate this Court regarding the underlying facts
4 and issues, which would only delay these proceedings and increase the costs to both parties.
5 Additionally, hearing this core matter in this Court would be an inefficient allocation of judicial
6 resources given that the bankruptcy court is more familiar with the facts and issues.

7 Put simply, Debtors have not established that permissive withdrawal is appropriate in
8 this case.

9 **B. Mandatory Withdrawal**

10 “[W]ithdrawal is mandatory only when ‘substantial and material consideration’ of
11 federal statutes other than the Bankruptcy Code ‘is necessary for the resolution of a case or
12 proceeding.’” In re Combustion Equipment Associates, Inc., 67 B.R. 709, 711 (S.D. N.Y.
13 1986) (emphasis in original); see also 28 U.S.C. § 157(d) (withdrawal is mandatory when
14 “resolution of the proceeding requires consideration of both title 11 and other laws of the
15 United States regulating organizations or activities affecting interstate commerce.”).

16 Here, Debtors have failed to identify any non-Code federal statute that necessarily must
17 be considered to resolve their challenge to Wells Fargo’s lien. This Court notes that Debtors
18 allege in their “first amended complaint” a claim for violation of the Truth in Lending Act
19 (“TILA”) for “effecting a Fraudulent Transfer.” (Docket No. 11.) However, Debtors have not
20 indicated why a substantial and material consideration of TILA is necessary for resolution of
21 their claim. Again, the gravamen of Debtors’ challenge to the lien is that fraudulent charges
22 were made to their account without their knowledge. Indeed, Debtors have also included a
23 claim for constructive fraud under California Civil Code Section 1573. Thus, Debtors’
24 challenge lies primary in fraud, not under TILA’s disclosure provisions. See Hauk v. JP
25 Morgan Chase Bank USA, 552 F.3d 1114, 1118 (9th Cir. 2009) (“Congress enacted TILA ‘to
26 assure a meaningful disclosure of credit terms so that the consumer will be able to compare
27 more readily the various credit terms available to him and avoid the uninformed use of credit,
28

1 and to protect the consumer against inaccurate and unfair credit billing and credit card
2 practices.’’) (quoting 15 U.S.C. § 1601).

3 In sum, Debtors have not shown that their challenge to Wells Fargo’s lien in their Chapter
4 7 bankruptcy proceeding is subject to mandatory withdrawal.


5 **IV. CONCLUSION**

6 For the reasons stated above,

7 IT IS HEREBY ORDERED THAT Debtors’ Motion for Withdrawal of Reference is
8 DENIED. The Clerk shall close the file and terminate all pending matters.

9 IT IS SO ORDERED.

10 Dated: September 2, 2010


SAUNDRA BROWN ARMSTRONG
United States District Judge

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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

IN RE: FRANCISCO MOLINA JR., ET AL. et
al,

Plaintiff,

v.

IN RE: FRANCISCO MOLINA JR., ET AL. et
al,

Defendant.

_____ /

Case Number: CV10-00575 SBA

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on September 8, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

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6 Dated: September 8, 2010

Richard W. Wieking, Clerk

By: LISA R CLARK, Deputy Clerk

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