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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

WELLS FARGO N.A., successor-in-
interest to WACHOVIA SBA
LENDING, INC., doing business as
Wachovia Small Business Capital,

Plaintiff,

v.

DONALD CHILL, individually and on
behalf of the marital community,

Defendant.

CASE NO. 10-cv-05348 JRC

ORDER GRANTING
PLAINTIFF’S MOTION FOR
PARTIAL SUMMARY
JUDGMENT

This Court has jurisdiction pursuant to 28 U.S.C. § 636(c), Fed. R. Civ. P. 73 and
Local Magistrate Judge Rule MJR 13 (*see also* Joint Status Report, ECF No. 9; Order on
Consent to Proceed Before a United States Magistrate Judge, ECF No. 10).

THIS MATTER has come before the Court on the plaintiff’s Motion for Partial
Summary Judgment (ECF No. 23). The Court has reviewed plaintiff’s Motion for Partial

1 Summary Judgment (ECF No. 23), the Declaration of Jason W. Alexander (ECF No. 24)
2 and the Declaration of Christiana Anderson (ECF No. 25).

3 The Court noted that when plaintiff filed this notice for summary judgment against
4 this *pro se* prisoner defendant, plaintiff did not provide notice consistent with the Ninth
5 Circuit authority, which requires that a *pro se* prisoner be given special notice before the
6 court grants summary judgment against him or her. *See Rand v. Rowland*, 113 F.3d 1520
7 (9th Cir. 1997). The Ninth Circuit has ruled that this notice applies not only in Section
8 1983 cases but other civil cases that impact *pro se* prisoners. *See S.E.C. v. Nite*, 207 F.3d
9 1134 (9th Cir. 2000). This special notice is required because of the unique status of
10 prisoners required to handle complex legal matters without legal representation. Very
11 recently, the Ninth Circuit held that such notice should be provided contemporaneously
12 with the summary judgment motion. *See Woods v. Carey*, 09-15548, __ F.3d __ (9th Cir.
13 2012). Therefore, this Court provided notice to defendant and re-noted the motion (see
14 ECF No. 26). Defendant has not provided any further response.

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16 Defendant has previously admitted to falsifying his business' books and records
17 and falsifying loan documents. Defendant is currently serving a sentence for bank fraud
18 and mail fraud due, in part, to those actions. Defendant is subject to a civil judgment in
19 addition to the criminal penalties. This Court GRANTS plaintiff's Motion for Partial
20 Summary Judgment.

21 FACTUAL SUMMARY

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23 Defendant has chosen not to respond to plaintiff's Motion for Partial Summary
24 Judgment. Therefore, the following facts are taken from plaintiff's uncontradicted

1 | declarations and are accepted as true. Defendant Donald Chill was the owner and sole
2 | shareholder of Charles Prescott Restoration, Company (“CPR”) from approximately 1995
3 | until 2007 (ECF No. 23, Exhibit 1, page 6, ¶10A. CPR was a disaster restoration
4 | company specializing in rehabilitating real and personal property damaged by fire, flood
5 | and other disasters (*id.*). Much of the work came from insurance companies (*id.*).

6 | According to a plea agreement signed by the defendant, beginning in 2004, at his
7 | direction, CPR submitted false and fraudulent information to Mutual of Enumclaw
8 | Insurance Company relating to CPR’s insurance reimbursements. *Id.* at ¶10(c).
9 | Defendant fabricated competing estimates, altered invoices, and increased CPR’s claimed
10 | amounts (*id.*). In the ten (10) jobs that were the subject of the plea agreement, defendant
11 | had fraudulently overbilled Mutual of Enumclaw by approximately \$3.2 million (*id.*).

12 | In May of 2007, CPR entered into a stock purchase agreement with Matthew
13 | Smith Company, Inc. (“MSC”), which applied for a Small Business Administration loan
14 | from plaintiff in connection that transaction (ECF No. 25, ¶3, Anderson Declaration;
15 | Exhibit 1, page 7, ¶10(e)). As part of that transaction, defendant submitted a “Sellers
16 | Certification” which represented that CPR had no exposure for false billings and that
17 | CPR had obtained business through legitimate means and followed applicable laws (*id.*).
18 | Defendant admits that this representation was materially false. (ECF No. 24, Exhibit 1,
19 | page 8, ¶10(e).
20 |

21 | In this criminal case, defendant agreed to provide restitution in the amount of
22 | \$1,708, 062.72 in relation to these transactions (*id.*, Exhibit 2).
23 |
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1 Plaintiff is the successor in interest to Wachovia SBA Lending, Inc. pursuant to an
2 assignment (ECF No. 25, at ¶7).

3 The stock purchaser, MSC, also obtained a judgment against defendant for
4 rescission of the stock purchase agreement and for violation of the Washington State
5 Securities Act in the Superior Court of Washington for Clark County, Case No. 08-2-
6 00611 9 (ECF No. 24, Exhibit 3). MSC assigned the MSC judgment against defendant to
7 plaintiff (*id.*, Exhibit 4).

8 Plaintiff filed this complaint in federal court alleging, among other things,
9 common law fraud. According to plaintiff:

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11 Plaintiff filed this lawsuit in order to preserve and enforce its
12 community property collection right, as well as preserve its discharge
13 defense rights should Defendant seek bankruptcy protection. These
14 rights and protections are not certain to be available under the
15 Criminal Restitution Award, the MSC Judgment, or the Borrower
16 Judgment for various reasons. Plaintiff is not seeking to collect more
17 than the amount it had been damaged. As such, once a judgment is
18 entered in this case, for every dollar collected, it will provide credit
19 not only under the judgment entered in this case, but also under the
20 MSC Judgment, Borrower Judgment and the Criminal Restitution
21 Award.

22 ECF No. 26, page 5-6.

23 Defendant's spouse is not named as a party in this action, nor does this Court offer
24 any opinion regarding the liability of the community for defendant's actions. This Order
is limited specifically to plaintiff's Motion for Partial Summary Judgment on the issue of
liability.

Plaintiff states that it has collected amounts pursuant to the Criminal Restitution
Award and as of June 25, 2012 is owed the principal sum of \$1,187,084.45, together with

1 interest thereon in the amount of \$862,542.20 and that interest will continue accrue on the
2 principal sum from June 26, 2012 at the rate of 10.5%, which calculates to \$341.49 per
3 day (ECF No. 25, ¶8). Defendant has also been assessed late fees in the amount of
4 \$1,349.22 (*id.*).

5 STANDARD FOR SUMMARY JUDGMENT

6 According to Fed. R. Civ. P. 56(c), summary judgment is appropriate where there
7 is no genuine issue as to any material fact and the moving party is entitled to judgment as
8 a matter of law. The moving party must present admissible evidence to support its
9 factual assertions. Once the initial burden is satisfied, the burden shifts to the opponent
10 to demonstrate that there remains an issue of material fact. *Celotex Corp. v. Katrett*, 477
11 U.S. 317, 323 (1986). If the moving party has the initial burden of proof, then the
12 movant must submit evidence of the elements of the case. In order to prove fraud,
13 plaintiff has the burden of proving: (1) a representation of an existing fact; (2) its
14 materiality; (3) its falsity; (4) the speaker's knowledge of its falsity or ignorance of its
15 truth; (5) the speaker's intent that the falsehood should be acted on by the person to
16 whom it is made; (6) ignorance of its falsity by the person to whom it is made; (7)
17 reliance on the truth of the representation; (8) his right to rely upon it; and (9) consequent
18 damages. *Pedersen v. Bibioff*, 64 Wn. App. 710, 723 (1992).


19
20 All of these elements have been met by the admission made in defendant's plea
21 agreement and has been offered against him in this action (ECF No. 24, Exhibit 1, ¶10).
22 Additionally, Christina Anderson, on behalf of plaintiff has verified that plaintiff relied
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1 on defendant's statements and had a right to rely on defendant's statements, resulting in
2 damages (ECF No. 25, ¶¶5-6).

3 Defendant's admissions in the plea agreement are not hearsay and are admissible
4 under Federal Rule of Evidence 801(d) (2). Additionally, statements in a plea agreement
5 are preclusively established for the matters asserted therein. *In re Reed*, 525 F.3d 805,
6 812-13 (9th Cir. 2008).

7 For these reasons, this Court enters summary judgment in favor of plaintiff on the
8 fraud claim contained in the second cause of action in the principal sum of
9 \$1,187,084.45, together with interest of \$867,664.55 (\$862,542.20 (through 6/25/2012),
10 plus \$5,122.35 (6/26/2012 though 7/10/2012)), plus interest which will continue to accrue
11 at the rate of 10.5% at the rate of \$341.49 per day, plus late fees in the amount of
12 \$1,349.22, plus plaintiff's costs and disbursements herein.

13 Dated this 14th day of August, 2012.

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17 J. Richard Creatura
18 United States Magistrate Judge
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