

JUL 10 2013

NOT FOR PUBLICATION

SUSAN M SPRAUL, CLERK  
U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

5	In re:	)	BAP No. AZ-12-1308-JuTaAh
		)	
6	GREER LESLIE WELLS and	)	Bk. No. 11-12232-RTB
	MONTIE LEE WELLS,	)	
7		)	
	Debtors.	)	
8		)	
	<hr/>	)	
9	GREER LESLIE WELLS;	)	
	MONTIE LEE WELLS,	)	
10		)	
	Appellants,	)	
11	v.	)	M E M O R A N D U M*
		)	
12	DEUTSCHE BANK NATIONAL TRUST	)	
	CO.,	)	
13		)	
	Appellee.	)	
14	<hr/>	)	

Argued and Submitted on June 21, 2013  
at Phoenix, Arizona

Filed - July 10, 2013

Appeal from the United States Bankruptcy Court  
for the District of Arizona

Honorable Redfield T. Baum, Bankruptcy Judge, Presiding

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Appearances: Appellants Greer Leslie Wells and Montie Lee  
Wells argued pro se; David Winthrop Cowles, Esq.,  
of Tiffany and Bosco, P.A., argued for appellee  
Deutsche Bank National Trust Co.

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\* This disposition is not appropriate for publication.  
Although it may be cited for whatever persuasive value it may  
have (see Fed. R. App. P. 32.1), it has no precedential value.  
See 9th Cir. BAP Rule 8013-1.

1 Before: JURY, TAYLOR, and AHART\*\*, Bankruptcy Judges.  
2

3 Chapter 13<sup>1</sup> debtors, Greer Leslie Wells and Montie Lee  
4 Wells, filed a series of motions seeking to dismiss or disallow  
5 the proof of claim (POC) filed by Deutsche Bank National Trust  
6 Co., Trustee (Bank) on the grounds that Bank lacked standing.  
7 The bankruptcy court denied debtors' first series of motions on  
8 February 28, 2012 (2/28/12 Order). The court later denied  
9 debtors' motion and amended motion for reconsideration of its  
10 2/28/12 ruling by order entered on March 30, 2012 (3/30/12  
11 Order). Debtors did not appeal this order. Instead, they filed  
12 a second series of motions, which were functionally the  
13 equivalent of their prior motions relating to Bank's lack of  
14 standing. The bankruptcy court denied these motions by order  
15 entered on July 10, 2012 order (7/10/12 Order). Debtors appeal  
16 from this order.

17 Debtors argue on appeal that Bank lacks standing to file a  
18 POC in their case for many reasons. However, because the  
19 3/30/12 Order was a final order, we do not have subject matter  
20 jurisdiction to consider debtors' arguments further in this  
21 appeal. Moreover, debtors' second series of motions filed after  
22 entry of the 3/30/12 Order involved the same transactional  
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24 \*\* Hon. Alan M. Ahart, United States Bankruptcy Judge for  
25 the Central District of California, sitting by designation.

26 <sup>1</sup> Unless otherwise indicated, all chapter and section  
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532.  
28 "Rule" references are to the Federal Rules of Bankruptcy  
Procedure and "Civil Rule" references are to the Federal Rules of  
Civil Procedure.

1 nucleus of facts as those asserted in their previous motions.  
2 Therefore, their later motions were barred by claim preclusion.  
3 Accordingly, we AFFIRM the 7/10/12 Order appealed from on this  
4 ground.

5 **I. FACTUAL AND PROCEDURAL HISTORY**

6 **A. Debtors' Mortgage, Assignment, and Default**

7 In 2004, debtors moved into the property located on North  
8 55th Avenue in Glendale, Arizona, owned by Greer's mother. At  
9 some point, Greer's mother quit claimed the property to her.  
10 Greer then refinanced the property.

11 On September 25, 2006, Greer obtained a loan in the amount  
12 of \$164,000 from American Brokers Conduit (ABC). The note was  
13 secured by a deed of trust (DOT) recorded against the property.  
14 The DOT showed Greer as the borrower, Capital Title Agency, Inc.  
15 as the trustee, and Mortgage Electronic Registration Systems  
16 (MERS) as the beneficiary, acting solely as nominee for lender  
17 ABC and its successors and assigns.

18 The note was subsequently transferred twice and contained  
19 two indorsements: (1) from ABC to Impac Funding Corporation  
20 (IFC), without recourse, signed by Daniel Lesterling, Assistant  
21 Secretary for ABC and (2) a blank indorsement executed by  
22 Jennifer Moua, an authorized signatory for IFC.

23 MERS assigned its beneficial interest under the DOT and its  
24 rights, if any, under the note to Bank (Assignment), as Trustee  
25 for the Certificateholders of ISAC 2006-5, Mortgage Pass-Through  
26 Certificates, Series 2006-5 (Trust). Carmelia Boone, listed as  
27 an assistant secretary of MERS, executed the DOT assignment.  
28 Boone's signature was notarized on August 11, 2010, by Connie L.

1 Briscoe, a Texas notary.

2 In April 2010, debtors defaulted on the loan. Thereafter,  
3 a foreclosure process was initiated.

4 **B. The Bankruptcy Proceedings**

5 On April 28, 2011, debtors filed a joint chapter 13  
6 petition to stop the foreclosure. Debtors listed Bank as a  
7 disputed secured creditor in their schedules. On July 14, 2011,  
8 debtors filed amended schedules. They listed no secured  
9 creditors in Schedule D and listed MERS as an unsecured creditor  
10 in Schedule F with a claim in the amount of \$68,600 "subject to  
11 setoff."

12 Also on July 14, 2011, debtors filed a first amended plan  
13 which provided for monthly payments of \$50 to the chapter 13  
14 trustee. Debtors' plan proposed to make the payments on their  
15 property directly to MERS and stated that no arrearages were  
16 due.

17 On September 27, 2011, the law firm of Tiffany & Bosco,  
18 P.A. filed a notice of appearance and request for notice in the  
19 case on behalf of Bank. The law firm filed a proof of claim  
20 (POC) on behalf of Bank, Claim #10, asserting a secured claim  
21 against debtors' property in the amount of \$160,069.27. The POC  
22 listed Bank as the creditor, but indicated that notices and  
23 payments should be sent to Bank of America, N.A. (BOA). The POC  
24 also listed \$13,138.38 of arrearages due (monthly payments  
25 4/1/10-4/1/11 @ \$995.26 per month). Attached to the POC was a  
26 copy of the note signed by Greer, the DOT, and the Assignment.

27 On October 4, 2011, Bank objected to debtors' amended  
28 chapter 13 plan because it did not provide for payment of

1 arrearages owed to Bank. Bank requested that the arrearages as  
2 set forth in its POC be paid through the plan.

3 **Debtors' First Motion to Dismiss Claim #10**

4 On October 25, 2011, debtors filed a motion to dismiss  
5 Claim #10 for failure to state a claim for which relief can be  
6 granted.<sup>2</sup> Debtors' alleged that they did not have any documents  
7 which verified that Bank had standing to file the POC in their  
8 bankruptcy case.

9 On November 11, 2011, Bank responded, asserting that it had  
10 standing to file the POC due to the Assignment of the DOT. Bank  
11 further maintained that ABC endorsed the note to IFC and, in  
12 turn, IFC then endorsed the note in blank which gave Bank  
13 standing.

14 On November 29, 2011, debtors replied by contending: (1) a  
15 copy of the note endorsed in "blank" was not proof of Bank's  
16 standing; (2) they sent a letter to Bank at the address shown on  
17 the notice of trustee's sale and Bank responded by stating that  
18 it was unable to identify the property or the mortgagor  
19 associated with it as a mortgage for which Bank was acting as  
20 trustee or custodian; (3) BAC Home Loans Servicing also alleged  
21 it was the "creditor" and "lender"; (4) MERS had no authority to  
22 assign, appoint or substitute a trustee, or assign the  
23 promissory note; and (5) a preliminary securitization audit  
24 suggested that the note did not make it into the trust. Debtors

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25  
26 <sup>2</sup> If Bank's proof of claim is analogized to a complaint then  
27 debtors' objections are like motions to dismiss for failure to  
28 state a claim on which relief can be granted. Heath v. Am.  
Express Travel Related Servs. Co. (In re Heath), 331 B.R. 424,  
435-36 (9th Cir. BAP 2005).

1 also requested verified documents that showed Bank was the  
2 "holder in due course." Finally, they questioned whether the  
3 Bank was aware of "this action or authorized this action by  
4 delegating authority to Tiffany & Bosco, P.A. . . . ."

5 Attached to debtors' reply were two letters: the letter  
6 from debtors to Bank requesting various documents associated  
7 with their mortgage and the response letter from Bank to debtors  
8 stating that it could not identify the property or mortgagor  
9 associated with it as a mortgage for which Bank was acting as  
10 trustee.

11 On December 6, 2011, the bankruptcy court heard debtors'  
12 motion and directed the parties to file documentation in support  
13 or opposition to the POC. The court continued the hearing to  
14 February 1, 2012.

15 On January 13, 2012, Bank submitted the declaration of  
16 Duane Dumler, the Assistant Vice President for BOA, as servicer  
17 for Bank. Dumler declared that he had personal knowledge of the  
18 records pertaining to the loan including that MERS had assigned  
19 the DOT to Bank and that the note was endorsed in blank which  
20 gave Bank "standing" to file the POC. Dumler also mistakenly  
21 stated that both debtors had executed the note secured by the  
22 real property.

23 **Debtors' Second Motion to Dismiss Claim #10**

24 On January 13, 2012, before the court had ruled on the  
25 first motion, debtors filed a second motion to dismiss  
26 Claim #10. Debtors maintained that the court lacked subject  
27 matter jurisdiction because Bank provided no "authoritative  
28 evidence, electronic or otherwise that [Bank] is in possession

1 or is in control of a single, unique, identifiable, unalterable  
2 copy of a note that identifies [Bank] as the secured creditor .  
3 . . ."

4 Debtors also alleged that the closing date of the Trust was  
5 December 21, 2006 and that the assignment from MERS to Bank  
6 regarding the note was recorded approximately three and one-half  
7 years later – too late to be included in the Trust.

8 **Debtors' Motion to Dismiss For**  
9 **Lack of Subject Matter Jurisdiction**

10 On January 24, 2012, debtors filed a motion to dismiss  
11 Claim #10 for lack of subject matter jurisdiction. Debtors  
12 asserted that Bank failed to provide any authenticated evidence  
13 or witnesses in support of its POC. On the same day, debtors  
14 filed a point by point rebuttal to the declaration of Dumler.  
15 Generally, debtors alleged that Dumler's statements were not  
16 authenticated and that his statement that both debtors had  
17 executed the note with respect to the property was false.  
18 Debtors continued to maintain that Bank's claim was  
19 unenforceable against them.

20 On January 27, 2012, Bank filed a motion to strike debtors'  
21 second motion to dismiss and their motion to dismiss for lack of  
22 subject matter jurisdiction. Bank argued that debtors had  
23 already filed a motion to dismiss to which it had responded,  
24 the points raised in debtors' subsequent pleadings should have  
25 been raised in their first motion, and a hearing had already  
26 been scheduled for February 1, 2012.

27 **The Bankruptcy Court's Ruling and 2/28/12 Order**

28 On February 1, 2012, the bankruptcy court heard debtors'

1 first motion to dismiss Claim #10 and took the matter under  
2 advisement.

3 On February 14, 2012, the bankruptcy court issued a Minute  
4 Entry/Order denying debtors' motion. The court found that based  
5 upon the copy of the note, DOT, Assignment, and declaration of  
6 Dumler, Bank established its right to enforce the debt and file  
7 the POC. The court observed that debtors listed the disputed  
8 secured lien holder in their schedules and also stated in their  
9 chapter 13 plan that they would pay directly to the creditor the  
10 payments owed on their residence.

11 On February 28, 2012, the bankruptcy court entered the  
12 order denying debtors' motion to dismiss Claim #10, debtors'  
13 second motion to dismiss Claim #10, and debtors' motion to  
14 dismiss for lack of subject matter jurisdiction.

15 **Debtors' Motion for Reconsideration**

16 On February 22, 2012, prior to the bankruptcy court's entry  
17 of an order on its February 14, 2012 ruling, debtors filed a  
18 motion for reconsideration. Debtors continued to maintain that  
19 there was no authenticated evidence that proved Bank's standing.

20 On February 27, 2012, Montie filed an affidavit which  
21 stated that he did not sign the promissory note or DOT related  
22 to the property.

23 **Debtors' Amended Motion for Reconsideration**

24 On March 12, 2012, debtors filed an amended motion to  
25 reconsider. That motion essentially reiterated their previous  
26 points.

27 On March 27, 2012, Bank filed a response to debtors'  
28 amended motion for reconsideration. Bank argued that debtors'



1 motion set forth no grounds for reconsideration under Civil  
2 Rules 59(e) or 60(b).

3 **Debtors' Motion to Disallow Claim**

4 On March 14, 2012, before the bankruptcy court had a chance  
5 to rule on their motion for reconsideration, debtors filed a  
6 motion to disallow Claim #10. Debtors alleged that Bank failed  
7 to timely object to their amended plan and thus it was too late  
8 to include Bank in their plan.

9 On March 27, 2012, Bank filed a motion to strike debtors'  
10 motion to disallow Claim #10 based on Civil Rule 12(f). Bank  
11 maintained that its failure to object to debtors' plan was not  
12 grounds for disallowing a claim. Bank further requested the  
13 bankruptcy court to enjoin debtors from filing any more  
14 pleadings concerning Claim #10 and requested attorneys' fees.

15 **The 3/30/12 Order**

16 On March 30, 2012, the bankruptcy court issued a Minute  
17 Entry/Order with respect to debtors' motion for reconsideration  
18 and amended motion for reconsideration. The court found no  
19 grounds to reconsider its February 14, 2012, Minute Entry/Order  
20 or the 2/28/12 Order which denied debtors' motions at Dkt. ##54,  
21 64, and 65.

22 In considering debtors' later filed motion to disallow  
23 Bank's claim, the court pointed out that Bank, although not  
24 required to file a POC, timely filed its POC on the claims bar  
25 date. The court further observed that Bank's POC did not affect  
26 its rights under the mortgage because Bank's lien passed through  
27 the bankruptcy unaffected. Finally, the bankruptcy court found  
28 that the deadline to file a plan objection was not

1 jurisdictional and the court was well within its powers to allow  
2 a late-filed objection. The bankruptcy court denied, with  
3 prejudice, debtors' objection to Bank's POC. (Emphasis added).

4 Debtors did not file a timely appeal from this order.

5 **Debtors' Motion for Order to Produce**

6 On April 12, 2012, debtors filed an objection to Bank's  
7 motion to strike and a motion for order to produce. In their  
8 motion for order to produce, debtors again requested the court  
9 to determine who the "correct parties are" and set a hearing to  
10 determine the standing of the "alleged secured creditors in  
11 question."

12 On April 30, 2012, Bank responded to debtors' motion to  
13 produce and again requested attorneys' fees for having to  
14 respond to debtors' motion. Bank noticed a hearing on the  
15 matters.

16 **Debtors' Emergency Motion to Dismiss**

17 On June 5, 2012, debtors filed an emergency motion to  
18 dismiss for refusal to produce evidence. Attached to debtors'  
19 motion were three letters: (1) a letter from Bank's attorneys  
20 stating that they were in default with their postpetition  
21 payments; (2) a response letter from debtors to Bank's attorneys  
22 requesting various documents relating to the foreclosure of  
23 their property and Bank's authority to conduct business in the  
24 State of Arizona; and (3) a further response letter from Bank's  
25 attorney stating that debtors already had documentation in the  
26 foreclosure file or it was within the public records and that  
27 the other information requested was protected by attorney-client  
28 privilege, the work-product doctrine, or protections against

1 disclosure of proprietary or confidential information.

2 **The 7/10/12 Order and Debtors' Appeal**

3 On June 6, 2012, the bankruptcy court heard debtors'  
4 objection to Bank's motion to strike, debtors' motion to  
5 disallow claim, and the Bank's motion to quash and request for  
6 attorneys' fees. The court denied debtors' motions and ruled  
7 that the Bank did not need to respond to any further objections  
8 filed by debtors unless directed otherwise by the court. The  
9 bankruptcy court also authorized Bank to file an affidavit and  
10 application with respect to their fee request. At the hearing,  
11 the bankruptcy court informed debtors that they were free to  
12 appeal.

13 On June 12, 2012, debtors filed a notice of appeal (NOA)  
14 regarding the court's ruling on June 6, 2012.

15 On July 10, 2012, the bankruptcy court entered the order  
16 with respect to the June 6, 2012 hearing. The 7/10/12 Order  
17 reiterated some of what was contained in the bankruptcy court's  
18 2/28/12 Order and 3/30/12 Order. Specifically, the order denied  
19 the debtors' motion to dismiss claim #10, second motion to  
20 dismiss claim #10, motion to dismiss for lack of subject matter  
21 jurisdiction, motion for reconsideration, amended motion for  
22 reconsideration, and motion to disallow claim #10. The order  
23 denied debtors' motion to produce and emergency motion to  
24 dismiss.

25 On July 16, 2012, debtors filed an amended NOA from the  
26 7/10/12 Order.

27 **II. JURISDICTION**

28 The bankruptcy court had jurisdiction over this proceeding

1 under 28 U.S.C. §§ 1334 and 157(b)(2)(A) and (K). We have  
2 jurisdiction under 28 U.S.C. § 158, subject to our discussion  
3 set forth immediately below.

4 Debtors' series of motions which triggered the various  
5 orders define the scope of what we decide in this appeal. Our  
6 focus is on the 3/30/12 Order which was a final order disposing  
7 of debtors' motions to dismiss or disallow Bank's POC and  
8 motions for reconsideration (Dkt. ## 54, 64, 65, 72, 76, and  
9 77). An order is final when it fully adjudicates the issues  
10 raised and clearly manifests the court's intent to be its final  
11 act in the matter. Brown v. Wilshire Credit Corp.  
12 (In re Brown), 484 F.3d 1116, 1120 (9th Cir. 2007) (quoting  
13 Slimick v. Silva (In re Slimick), 928 F.2d 304, 307 (9th Cir.  
14 1990)).

15 The 3/30/12 Order on its face evidenced the judge's intent  
16 that the order was final. Although no formal words of judgment  
17 are necessary to convey finality, the Minute Entry/Order,  
18 stated: "IT IS ORDERED denying the motion and amended motion to  
19 reconsider and IT IS FURTHER ORDERED denying, with prejudice,  
20 the objection to [Bank's] proof of claim." (Emphasis added).  
21 This language amply demonstrates that a final disposition was  
22 intended on issues relating to Bank's standing to file a POC in  
23 debtors' case. See Slimick, 928 F.3d at 308.

24 Moreover, the 3/30/12 Order states that it was an order, it  
25 was mailed to the parties and counsel, signed by the judge, and  
26 entered on the docket. See Ingram v. ACandS, Inc., 977 F.2d  
27 1332, 1338-39 (9th Cir. 1992). Indeed, debtors must have  
28 recognized that the court's ruling on February 14, 2012 and its



1 **IV. STANDARDS OF REVIEW**

2 We review the bankruptcy court's denial of debtors' motion  
3 to produce (evidence) for an abuse of discretion. See United  
4 States v. Rivera-Relle, 333 F.3d 914, 918 (9th Cir. 2003).

5 We construe debtors' emergency motion to dismiss for  
6 refusal to produce evidence as a motion for sanctions under  
7 Civil Rule 37(b)(2). The decision to impose sanctions under  
8 Civil Rule 37 is in the trial court's discretion. United States  
9 v. Sumitomo Marine & Fire Ins. Co., 617 F.2d 1365, 1369 (9th  
10 Cir. 1980). A bankruptcy court abuses its discretion if it  
11 applied the wrong legal standard or its findings were illogical,  
12 implausible, or without support in the record.

13 TrafficSchool.com, Inc. v. Edriver Inc., 653 F.3d 820, 832 (9th  
14 Cir. 2011).

15 We may affirm the bankruptcy court's decision on any ground  
16 fairly supported by the record. Tahoe-Sierra Pres. Council,  
17 Inc. v. Tahoe Reg'l Planning Agency, 322 F.3d 1064, 1076-77 (9th  
18 Cir. 2003).

19 **V. DISCUSSION**

20 After examining debtors' motion to produce and emergency  
21 motion to dismiss for Bank's failure to produce evidence, we  
22 conclude that these motions were functionally the equivalent to  
23 debtors' first series of motions, which the bankruptcy court  
24 denied in the 3/30/12 Order. Once again, debtors' second series  
25 of motions attacked the Bank's standing to file its POC in their  
26 case based on the Bank's lack of evidence. As we explain below,  
27 the doctrine of claim preclusion prevented debtors from  
28 collaterally attacking the court's 3/30/12 Order through their

1 subsequently filed motions.<sup>3</sup>

2 "Res judicata, also known as claim preclusion, prohibits  
3 the litigation in a subsequent action of any claims that were  
4 raised or could have been raised in the prior action." Cabrera  
5 v. City of Huntington Park, 159 F.3d 374, 381 (9th Cir. 1998).  
6 The bankruptcy court's 3/30/12 Order precluded debtors'  
7 subsequently filed motions if the following three elements are  
8 established: (1) the bankruptcy court's 3/30/12 Order denying  
9 debtors' motions to dismiss Claim #10 was a final judgment;  
10 (2) debtors' motions filed prior to the issuance of the 3/30/12  
11 Order involved the same parties as debtors' subsequently filed  
12 motions; and (3) there is an identity of claims between debtors'  
13 motions filed prior to the 3/30/12 Order and those subsequently  
14 filed. Id. All three elements are met in this case.

15 In Siegel v. Fed. Home Loan Mortg. Corp., 143 F.3d 525, 529  
16 (9th Cir. 1998), the Ninth Circuit held that "the allowance or  
17 disallowance of a claim in bankruptcy is binding and conclusive  
18 on all parties or their privies, and being in the nature of a  
19 final judgment, furnishes a basis for a plea of res judicata."  
20 Here, as noted above, the bankruptcy court's 3/30/12 Order was a

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22 <sup>3</sup> Although the bankruptcy court did not explicitly reach the  
23 issue of claim preclusion, it implicitly applied the doctrine by  
24 ordering that Bank did not need to respond to any further motions  
25 filed by debtors unless directed otherwise by the court.  
26 Moreover, "[w]e may affirm the bankruptcy court on any ground  
27 supported by the record, even if the ground is not relied on by  
28 the [bankruptcy] court." Tahoe-Sierra Pres. Council, Inc.,  
322 F.3d at 1076-77; see also Olson v. Morris, 188 F.3d 1083,  
1085 (9th Cir. 1999) ("We may affirm on any ground supported by  
the record, and affirm the district court on the grounds of res  
judicata.").

1 final order that allowed Bank's POC.

2 There is also no dispute that all of debtors' motions  
3 involved a dispute between debtors and Bank.

4 Finally, an identity of claims exists between debtors'  
5 motions filed prior to issuance of the 3/30/12 Order and those  
6 subsequently filed. In Siegel, the Ninth Circuit employed a  
7 four factor test to determine whether successive actions involve  
8 the same claims: "(1) whether rights or interests established in  
9 the prior judgment would be destroyed or impaired by prosecution  
10 of the second action; (2) whether substantially the same  
11 evidence is presented in the two actions; (3) whether the two  
12 suits involve infringement of the same right; and (4) whether  
13 the two suits arise out of the same transactional nucleus of  
14 facts." 143 F.2d at 529. In Int'l Union of Operating  
15 Eng'rs-Employers Constr. Indus. Pension, Welfare & Training  
16 Trust Funds v. Karr, 994 F.2d 1426, 1429 (9th Cir. 1993), the  
17 Ninth Circuit explained that the "last of these criteria is the  
18 most important." The Karr court held that if both claims in the  
19 different actions arose from the same "transactional nucleus of  
20 facts" and the claims in the second action could have been  
21 brought in the first, that alone would be sufficient to find  
22 that the second action is barred by the first. 994 F.2d at  
23 1430.

24 Debtors' motions all involved the same transactional  
25 nucleus of facts. Debtors alleged Bank did not have standing to  
26 file the POC because it failed to prove that it was the holder  
27 of their note. As a result, debtors' second series of motions  
28 required the bankruptcy court to undertake the same analysis as



1 required under their first series of motions which fully  
2 litigated the standing issue and resulted in a final order which  
3 was not timely appealed. To the extent debtors raised any new  
4 grounds to challenge the Bank's POC in their second series of  
5 motions, those additional grounds could have been raised in  
6 their motions filed prior to entry of the 3/30/12 Order.

7 Because all the elements for claim preclusion have been met, we  
8 conclude that the bankruptcy court's 3/30/12 Order precluded  
9 debtors' second series of motions which addressed the same  
10 subject matter.

11 The policies underlying claim preclusion support our  
12 conclusion. Claim preclusion "is motivated primarily by the  
13 interest in avoiding repetitive litigation, conserving judicial  
14 resources, and preventing the moral force of court judgments  
15 from being undermined." Haphey v. Linn Cnty., 924 F.2d 1512,  
16 1518 (9th Cir. 1991), rev'd in part on other grounds, 953 F.2d  
17 549 (9th Cir. 1992) (en banc). Debtors' serial filing of  
18 motions concerning the same subject matter was the reason the  
19 bankruptcy court ultimately ruled that Bank did not need to  
20 respond to any further motions filed by debtors. Application of  
21 the claim preclusion doctrine is appropriate under these  
22 circumstances. To hold otherwise would allow debtors to  
23 perpetually toll the time for filing a NOA and continue  
24 litigation indefinitely by repeatedly filing virtually identical  
25 motions without consequence.

26 Even if debtors' second series of motions filed after the  
27 entry of the 3/30/12 Order could somehow be considered  
28 independent of their previously filed motions embodied in that

1 order, debtors' briefs do not clearly articulate how the  
2 bankruptcy court erred in denying debtors' later filed motions.  
3 Under these circumstances, we cannot say it was an abuse of  
4 discretion for the bankruptcy court to deny debtors'  
5 subsequently filed motions which were an attempt to get yet  
6 another bite at the apple.

7 **VI. CONCLUSION**

8 For the reasons stated, we AFFIRM.

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