

1 BRIAN D. LYNCH
2 United States Bankruptcy Judge
3 1717 Pacific Ave, Suite 2155
4 Tacoma, WA 98402

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7 **UNITED STATES BANKRUPTCY COURT**
8 **WESTERN DISTRICT OF WASHINGTON AT TACOMA**

9 In re:

Case No. 09-46549

10 DANIEL J WAGNER and ALICE L
11 WAGNER,
12 Debtors.

**ORDER TO SHOW CAUSE REGARDING
PAYMENT TO LENDER PROCESS
SERVICES**

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14 THIS MATTER came before the Court on the Declaration in Support of Response to
15 Claim Objection ("Declaration") filed by Aaron Masser, attorney for EMC Mortgage
16 Corporation ("EMC") [Dkt. No. 36]. At a November 10, 2010 claim objection hearing wherein
17 the debtor objected to the fees contained in EMC's proof of claim, the Court directed Mr.
18 Masser to file a declaration to insure that Mr. Masser's law firm, Routh Crabtree Olsen, P.S.,
19 is not improperly sharing attorney fees with a non-attorney third-party or charging the fees of a
20 nonattorney to the debtor. The Declaration did not allay these concerns.

21 The Declaration states that Routh Crabtree Olsen "pays technology fees associated
22 with getting access to [EMC's] system on each referral we receive. The technology fees are
23 not included in what we billed for the preparation and filing of the proof of claim." Dkt. No. 36,
24 para. 4. The Declaration goes on to state: "[t]he system that EMC Mortgage Corporation uses
25 is Lender Process Services. EMC will provide information regarding this loan to LPS and then

1 LPS will send us a referral to prepare the proof of claim. We pay LPS to get access to their
2 system to review the information and provide updates." Dkt. No. 36, para. 5. EMC's Proof of
3 Claim includes \$300 for "attorney fees for filing proof of claim," which comports with the
4 statement in the Declaration that "[o]n January 4, 2010, [Routh Crabtree Olsen] billed \$300 for
5 the preparation and filing of the Proof of Claim." Dkt. No. 36, para. 3. But Lender Process
6 Services is not a law firm. It is also unclear how much Routh Crabtree Olsen pays LPS in
7 connection with its services in connection with the proof of claim.

8 Washington State Rule of Professional Conduct 5.4(a) provides that "[a] lawyer or law
9 firm shall not share legal fees with a nonlawyer," except in circumstances not relevant here.
10 The Declaration and other evidence adduced in connection with the claim objection raise an
11 issue whether the payment of the "technology fee" to LPS is a disguised fee-sharing
12 arrangement. In addition, if the practical effect of this arrangement is that the debtor as
13 grantor of the deed of trust is paying the "technology fee" and that the attorney's fee is some
14 lesser amount, then an issue is raised whether said fee may be recovered under the deed of
15 trust, and further whether it may be included in a proof of claim.

16 Now, therefore, for good cause showing, counsel for EMC is ORDERED to appear on
17 **February 23, 2011 at 10:00 a.m.** at the **United States Bankruptcy Court, 1717 Pacific**
18 **Avenue, Courtroom I, Tacoma, Washington** to show cause why this matter should not set
19 for an evidentiary hearing on the various fees contained in EMC's proof of claim to determine
20 whether they violate the Washington Rules of Professional Conduct or any other applicable
21 laws, and whether or not they are authorized by the deed of trust.

22 Please respond to this order by filing a written response with the Court no later than
23 **February 16, 2011** and appearing at said hearing. The Court respectfully requests the input
24 and positions of the United States Trustee and the Chapter 13 trustee, as well as any other
25 interested party.

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It is so ORDERED.



Brian D. Lynch
United States Bankruptcy Judge
(Dates as of Entered on Docket date above)

SENT TO BNC FOR MAILING

I certify that on February 2, 2011, I caused this Order to be served by e-mail on the following individuals:

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/s/ Todd Blodgett, Law Clerk