

**IN THE UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION
www.flsb.uscourts.gov**

IN RE:)	
)	Chapter 7
ULRICH FELIX ANTON ENGLER;)	CASE NO. 9:08-bk-04360-MGW
PRIVATE COMMERCIAL OFFICE, INC.;)	
and PCO CLIENT MANAGEMENT, INC.)	
)	
Debtor.)	
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	/	

**MOTION TO COMPEL
PRODUCTION OF DOCUMENTS FROM WELLS FARGO BANK, N.A.**

Special Litigation Counsel for the Trustee (“Special Litigation Counsel”) moves this Court for an order compelling Wells Fargo Bank, N.A. (“Wells Fargo”) to produce documents, and as grounds therefore states:

1. Special Litigation Counsel served Wells Fargo with a copy of the Subpoena for Rule 2004 Deposition Duces Tecum (the “Subpoena”) which included a document production request. A copy of the Subpoena and Affidavit of Service is attached as Exhibit A.

2. Pursuant to the Subpoena, Wells Fargo was required to produce documents on or before February 21, 2011. Wells Fargo was to produce documents in response to thirty-four requests for production.

3. Having received no response to the Subpoena, on February 28, 2011, Special Litigation Counsel sent a letter to the Records Custodian of Wells Fargo requesting that Wells Fargo produce the documents requested by the Subpoena as soon as possible. The February 28, 2011 letter is attached as Exhibit B.

4. Having received no response to the Subpoena, or to the February 28, 2011 letter, on March 11, 2011, Special Litigation Counsel sent a letter to James M. Strother, Executive Vice

President, General Counsel Legal Group of Wells Fargo & Company, once again requesting that Wells Fargo produce documents responsive to the Subpoena. A copy of the March 11, 2011 letter is attached as Exhibit C.

5. On or about March 31, Special Litigation Counsel spoke with Fran Jackson from the Wells Fargo legal order processing department. Ms. Jackson explained that the department had just received the subpoena. Special Litigation Counsel and Ms. Jackson reached an agreement that responsive documents would be produced on April 13, 2011, thereby giving Wells Fargo ten working days to complete the response to the subpoena.

6. Wells Fargo did not produce any documents on April 13, 2011.

7. On April 14, 2011, Special Litigation Counsel called the Wells Fargo Legal Order Processing Department and was told that documents would be produced on April 19, 2011.

8. Wells Fargo did not produce any documents on April 19, 2011.

9. On April 19 2011, Special Litigation Counsel called the Wells Fargo Legal Order Processing Department and was told that the documents were in the "close verification" area but it was unknown when they would be produced.

10. Wells Fargo sent a letter to Special Litigation Counsel dated April 27, 2011 accompanied by a small production of documents. The letter states, "[t]his constitutes Wells Fargo Bank NA final response to your subpoena and this matter will be closed." A copy of the April 27, 2011 letter is attached as Exhibit D.

11. On May 4, 2011, Special Litigation Counsel sent an email to Charles Stafford from Wells Fargo acknowledging receipt of the April 27, 2011 letter stating that Special Litigation Counsel did not consider the production to be fully responsive to the Subpoena and that absent any further production, Special Litigation Counsel intended to file a motion to compel.

12. On May 5, 2011, Special Litigation Counsel spoke with Charles Stafford from Wells Fargo is in-house legal department. Mr. Stafford assured Special Litigation Counsel that the April 27, 2011 communication was not the final response and that the matter would remain open. He stated that Wells Fargo was continuing to investigate and develop a strategy to locate documents responsive to the Subpoena. Mr. Stafford agreed to produce documents on a rolling basis. Special Litigation Counsel explained that email communications and investigative reports should be prioritized.

13. On May 9, 2011, Special Litigation Counsel spoke with Heather Ries, outside counsel to Wells Fargo. Ms. Ries explained that she had been retained in connection with the Subpoena, that she was reviewing the file, and needed to investigate the status of the response and any future response. Special Litigation Counsel agreed to speak with Ms. Ries on May 13, 2011 to allow her time to review the file.

14. On May 13, 2011, Special Litigation Counsel spoke with Ms. Ries. Ms. Ries explained that she was still investigating to determine whether documents responsive to the Subpoena existed that had not been produced and where they were located. She was unable to provide a date certain by which all (or any) responsive documents would be produced.

15. Despite the fact that the Subpoena was served in early February 2011 with a response date of February 21, 2011, and Special Litigation Counsel has continually sought to negotiate in good faith with Wells Fargo to enforce the subpoena, Wells Fargo did not provide written objections to the Subpoena to Special Litigation Counsel until May 16, 2011. The written objections were provided on the same day that Special Litigation Counsel informed Wells Fargo's counsel that it intended to file this motion to compel.

16. Wells Fargo has waived any objections that it may have to the Subpoena by its failure to serve any written objections to the Subpoena for over two months. *Universal City Dev. Partners, Ltd. v. Ride & Show Eng'g, Inc.*, 230 F.R.D. 688, 697 (M.D. Fla. 2005) (“Failure to serve written objection to a subpoena within the time specified by Fed.R.Civ.P. 45 typically waives any objections the party may have.”).

17. Accordingly, Special Litigation Counsel moves this Court for an order (1) compelling Wells Fargo to produce all documents responsive to the Subpoena within seven (7) days of the Order compelling production; (2) awarding Special Litigation Counsel’s attorney fees and costs in making this motion; and (3) and for such other relief as the Court deems just and proper.

Dated: May 17, 2011

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served (i) via the Court's CM/ECF notification to those parties who are registered CM/ECF participants in this case and (ii) was furnished by electronic mail on this 17th day of May, 2011 to counsel for Wells Fargo:

Heather Ries, Esq.
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By: /s/ David A. Samole
David A. Samole

SERVICE LIST

**IN RE ULRICH FELIX ANTON ENGLER
CASE NO. 08-bk-04360-MGW**

9:08-bk-04360-MGW Notice will be electronically mailed to:

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