

No. 19-13015

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

JOANNA BURKE; JOHN BURKE,

Plaintiffs-Appellants,

v.

CFPB, OCWEN LOAN SERVICING, L.L.C.,

Defendant-Appellee.

On Appeal from the United States District Court
For the Southern District of Florida;
District Court Docket No. 9:17-cv-80495-KAM

RECORD EXCERPTS

Joanna Burke
46 Kingwood Greens Dr
Kingwood, Texas
77339
Telephone: (281) 812-9591
Fax: (866) 805-0576

John Burke
46 Kingwood Greens Dr
Kingwood, Texas
77339
Telephone: (281) 812-9591
Fax: (866) 805-0576

Pro Se Appellants

John Burke, Pro Se
46 Kingwood Greens Dr,
Kingwood, TX,77339
Telephone:
(281) 812-9591
Facsimile:
(866) 705-0576
Email: alsation123@gmail.com

TABLE OF CONTENTS

		TAB
I	CERTIFICATE OF INTERESTED PERSONS	1
II	JUDGE M. ISGUR ORDER	2
III	JUDGE N. ATLAS MEMORANDUM & ORDER	3
IV	JOINT DISCOVERY / CASE MGT PLAN	4
V	CERTIFICATE OF SERVICE	5

I	CERTIFICATE OF INTERESTED PERSONS	TAB 1
----------	--	------------------

**CERTIFICATE OF INTERESTED PERSONS (“CIP”)
AND CORPORATE DISCLOSURE STATEMENT**

Pursuant to Eleventh Circuit Rule 26.1-1 and Federal Rule of Appellate Procedure 26.1, Appellants hereby furnish a complete list of the following persons who have an interest in the outcome of this case.

US District Judge;

Marra, Kenneth A.

US Magistrate Judge;

Matthewman, William

Consumer Financial Protection Bureau (“CFPB”);

Brenowitz, Stephanie C.

Baez, Tianna Elise

Chin, Shirley T.

Cohen, Adam Harris

Demille-Wagman, Lawrence

Desai, Atur Ravi

Healey, Jean Marie

Kelly, Erin Mary

Nodler, Gregory Ryan

Posner, Michael

Roberson, Amanda Christine

Savage, James Joseph
Singelmann, Jan Edwards
Wilson, Jack Douglas

**Office of the Attorney General &
Office of Financial Regulation;**

Fransen, Scott Ray
Granai, Sasha Funk
Pinder, Jennifer Hayes
Winship, Blaine H.

Intervenor Plaintiff;

Burke, Joanna
Burke, John
Fauley, Robynne (*TERMINATED*)
Subramaniam, Denise (*TERMINATED*)

**Ocwen Financial Corporation &
Ocwen Loan Servicing, LLC &
Ocwen Mortgage Servicing, Inc.;**

Azuero, Catalina E.
Berry, Bridget Ann
Craven, Laura S.
Hefferon, Thomas M.
Previn, Matthew P.
Protess, Amanda B.

Riffee, Matthew L.
Rose-Smith, Sabrina M.
Sheldon, Matthew S.
Smith, Tierney E.
Stoll, Laura
Tayman, W. Kyle
Wein, Andrew Stuart

Law Firms;

Buckley, LLP (“Buckley”)
Greenberg Traurig (“GTLaw”)
Goodwin Proctor, LLP (“Goodwin”)

Dated; 6th May, 2020;

/s/ Joanna Burke

Joanna Burke, Pro Se
46 Kingwood Greens Dr,
Kingwood, TX, 77339
Telephone:
(281) 812-9591
Facsimile:
(866) 705-0576
Email: kajongwe@gmail.com

/s/ John Burke

II JUDGE M. ISGUR ORDER

TAB

2



ENTERED
02/27/2019

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

IN RE:	§	
LARRY GREEN, et al	§	CASE NO: 12-38016
Debtor(s)	§	
	§	CHAPTER 13
	§	
EDRIS GREEN, et al	§	
Plaintiff(s)	§	
	§	
VS.	§	ADVERSARY NO. 18-3351
	§	
OCWEN LOAN SERVICIANG, LLC AS	§	
SERVICER FOR DEUTSCHE BANK	§	
NATIONAL TRUST COMPANY, AS	§	
TRUSTEE FOR MORGAN STANLEY ABS	§	
CAPITAL I INC. TRUST 2004-HE3,	§	
MORTGAGE PASS-THROUGH	§	
CERTIFICATES, SERIES 2004-HE3	§	
Defendant(s)	§	

**ORDER OVERRULING OBJECTION
TO TURNOVER OF TRANSCRIPTS**

The Court has reviewed the excellent briefs filed by the parties as to whether Ocwen should be compelled to turnover the transcripts from a hearing before the Consumer Financial Protection Bureau. The Court concludes that the transcripts are not restricted from turnover for two, independent reasons:

- The CFPB has utilized the information reflected in the transcripts in a publicly filed lawsuit, taking the information out of the definition of “confidential information.” See 12 C.F.R. § 1070.2(f).
- Even if the transcripts are deemed “confidential information,” CFPB regulations do not preclude Ocwen from complying with the Court’s Order compelling the turnover of the information if appropriate protective measures are put into place. 12 C.F.R. § 1070.47(a)(4); see paragraph 8 below.

The Court will respect the CFPB’s request to give it an opportunity to contest this ruling.

The Court orders:

1. The transcripts must be provided to the Plaintiffs, subject to the procedures in this Order.

2. Not later than March 20, 2019, Ocwen may file an objection to the turnover of the transcripts on any ground other than CFPB confidentiality.
3. Not later than March 26, 2019, the CFPB may object to the turnover of the transcripts.
4. On April 9, 2019 at 3:00 p.m., the Court will consider any objection filed by the CFPB and any objections filed by Ocwen. The status conference previously scheduled for 4:00 p.m. on April 9, 2019 is reset to 3:00 p.m. on April 9, 2019.
5. Ocwen must have three copies of the transcripts available in Court on April 9, 2019.
6. Except as set forth in paragraphs 2 and 5 of this Order, Ocwen's compliance with paragraph 1 of this Order is deferred pending the outcome of the April 9, 2019 hearing.
7. Ocwen is ordered to immediately provide a copy of the transcripts to its own attorney in this adversary proceeding.
8. If the Plaintiffs receive the transcripts, Plaintiffs may not quote from or refer to information contained solely in the transcripts except (i) in a sealed motion; or (ii) as authorized in advance by order of this Court. This paragraph does not (x) preclude the use of information by the Plaintiffs that is obtained from any source other than the transcripts, including information that is obtained from a third party; or (y) restrict Plaintiffs from utilizing information gleaned from the transcripts to formulate discovery to Ocwen; or (z) restrict Plaintiffs from formulating discovery to third parties; provided, any third party discovery may not disclose the information from the transcripts.

SIGNED **February 27, 2019.**



Marvin Isgur
UNITED STATES BANKRUPTCY JUDGE

		TAB
III	JUDGE N. ATLAS MEMORANDUM & ORDER	3

ENTERED

August 26, 2019

David J. Bradley, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE: §
LARRY GREEN and EDRIS GREEN, § Bankruptcy Case No. 12-38016 (13)
Debtors. § Adversary Case No. 18-3351
----- §

LARRY GREEN and EDRIS GREEN, § **CIVIL ACTION NO. H-19-2690**
Plaintiffs/Appellees, §
v. §
OCWEN LOAN SERVICING, LLC, §
Defendant/Appellant. §

MEMORANDUM AND ORDER

This case is before the Court on the Motion for Leave to File Interlocutory Appeal (“Motion”) [Doc. # 2] filed by Ocwen Loan Servicing, LLC (“Ocwen”), to which Debtors Larry Green and Edris Green filed a Response [Doc. # 7], and Ocwen filed a Reply [Doc. # 8].¹ Having reviewed the record and the governing legal authorities, the Court **denies** the Motion.

I. BACKGROUND

On March 26, 2013, United States Bankruptcy Judge Marvin Isgur entered an Order [Doc. # 67 in BR Case 12-38016] confirming the Chapter 13 Plan proposed by

¹ Also pending is Ocwen’s Motion for Stay Pending Appeal [Doc. # 4]. Because the Court denies leave for the interlocutory appeal, the Motion for Stay Pending Appeal is **denied as moot**.

Debtors Larry and Edris Green. On December 27, 2017, Judge Isgur found that Debtors had completed all payments to Ocwen required under the confirmed Chapter 13 Plan as of October 31, 2017. *See* Order Deeming the Mortgage Current and Directing Debtor(s) to Resume Payments [Doc. # 182 in BR Case 12-38016]. Judge Isgur ordered Debtors to begin making direct payments to Ocwen in the amount of \$790.66 beginning November 1, 2017. *See id.* Debtors received an Order of Discharge [Doc. # 186 in BR Case 12-38016] under 11 U.S.C. § 1328(a) on January 22, 2018.

On November 25, 2018, the Greens filed this Adversary Proceeding. The Greens allege that they made the required payments to Ocwen through July 6, 2018, after which Ocwen refused to accept payments and initiated foreclosure proceedings. *See* Complaint [Doc. # 1 in Adv. Case No. 18-3351], ¶ 18. The Greens allege that Ocwen has continued to attempt collection of amounts that were cured in the Chapter 13 Plan and has improperly initiated foreclosure proceedings. *See id.*, ¶ 14.

In the Adversary Proceeding, the Greens requested a copy of all transcripts (“CFPB Transcripts”) of proceedings before the Consumer Financial Protection Bureau (“CFPB”) that were referenced and quoted in a complaint filed by the CFPB against Ocwen in the Southern District of Florida. *See* Joint Discovery/Case Management Plan [Doc. # 9 in Adv. Case No. 18-3351], p. 5. The CFPB complaint

was filed in Florida on April 20, 2017, relating to a time period between 2014 and 2016. Ocwen opposed disclosure of the CFPB Transcripts, and Judge Isgur ordered briefing on the issue.

On February 27, 2019, Judge Isgur held that the CFPB Transcripts were not “Confidential Information” that was “restricted from turnover” under the applicable federal regulations because the CFPB had used the information in the complaint in the Southern District of Florida,² and because the applicable regulations do not preclude Ocwen from disclosing the CFPB Transcripts pursuant to a Court order and with appropriate protective measures.³ *See* Order Overruling Objections to Turnover of Transcripts (“February Order”) [Doc. # 32 in Adv. Case No. 18-3351]. Judge Isgur provided an opportunity for the CFPB to file any objection to the turnover of the

² The CFPB regulations define “Confidential information” to mean:

confidential consumer complaint information, confidential investigative information, and confidential supervisory information, as well as any other CFPB information that may be exempt from disclosure under the Freedom of Information Act pursuant to 5 U.S.C. 552(b). Confidential information ***does not include*** information contained in records that have been made publicly available by the CFPB or information that has otherwise been publicly disclosed by an employee with the authority to do so.

12 C.F.R. § 1070.2(f) (emphasis added).

³ The CFPB regulations provide that nothing in those regulations shall prevent any person “to whom the information is made available under this subpart from complying with a legally valid and enforceable order of a court of competent jurisdiction compelling production of the CFPB’s confidential information . . .” 12 C.F.R. § 1070.47(a)(4)

CFPB Transcripts. *See id.* Judge Isgur also imposed restrictions on the Greens’ use of the information in the CFPB Transcripts *if* they ultimately received copies, ordering that they “may not quote from or refer to information contained solely in the transcripts except (i) in a sealed motion; or (ii) as authorized in advance by order of this Court.” *See id.* There is nothing in the record suggesting the CFPB filed an objection to the turnover of the CFPB Transcripts.

Ocwen filed an Objection to Production of CFPB Transcripts (“Objection”) [Doc. # 35 in Adv. Case No. 18-3351]. In the Objection, Ocwen proposed additional “protective provisions” should the CFPB Transcripts be disclosed to the Greens. *See id.*, ¶ 27.

On April 22, 2019, Judge Isgur issued an Order to Produce Transcripts (“April Order”) [Doc. # 39 in Adv. Case No. 18-3351]. Judge Isgur ordered Ocwen to produce the CFPB Transcripts only to the Greens’ attorney, who was ordered to maintain them in confidence and was precluded from making any disclosures, in pleadings or otherwise, of the information in the CFPB Transcripts. *See* April Order, ¶¶ 1-2.

On July 2, 2019, the Bankruptcy Court conducted a hearing on Ocwen’s request for a broad, general protective order for the CFPB Transcripts. On July 3, 2019,

Judge Isgur issued an Order (“July Order”) [Doc. # 52 in Adv. Case No. 18-3351], denying Ocwen’s request for a general protective order, stating however:

If Ocwen believes [certain information concerning identified borrowers or proprietary operations processes] was disclosed in the CFPB Transcripts, it must identify the appropriate volume, page, and line numbers to the Court by July 19, 2019. The Court will then conduct an *in camera* review of the identified information to determine whether limited portions of the Transcripts should be protected.

July Order, p. 2.

On July 17, 2019, Ocwen filed a Notice of Appeal [Doc. # 55 in Adv. Case No. 18-3351] and the pending Motion for Leave to File Interlocutory Appeal. On July 19, 2019, Ocwen filed its Notice of Designation of Portions of Material in CFPB Transcripts Pursuant to Order [Doc. # 57 in Adv. Case No. 18-3351]. Consideration of Ocwen’s designations remains before Judge Isgur.⁴

By Stay Order [Doc. # 63 in Adv. Case No. 18-3351], entered August 6, 2019, Judge Isgur stayed the July Order, except for the paragraph giving Ocwen an opportunity to designate portions of the CFPB Transcripts for *in camera* review, until August 31, 2019, “or such longer date as is imposed by the United States District Court. By Order [Doc. # 5] entered August 9, 2019, this Court extended the Stay Order until the Motion for Stay Pending Appeal is decided.

⁴ By Order [Doc. # 63 in Adv. Case No. 18-3351] entered August 6, 2019, Judge Isgur directed the Greens to file any response to Ocwen’s designations by August 31, 2019.

In the pending Motion, Ocwen argues that an interlocutory appeal should be authorized pursuant to 28 U.S.C. § 158(a)(3) or, alternatively, pursuant to the collateral order doctrine. The Motion has been fully briefed and is now ripe for decision.

II. APPEAL PURSUANT TO 28 U.S.C. § 158(a)(3)

Appeals of interlocutory bankruptcy court orders are allowed “with leave of the [district] court.” *See* 28 U.S.C. § 158(a)(3). District courts in the Fifth Circuit apply the factors listed under 28 U.S.C. § 1292(b) to determine whether to grant leave to file an interlocutory appeal. *See, e.g., In re Royce Homes LP*, 466 B.R. 81, 94 (S.D. Tex. 2012). The factors are: (1) there is a controlling issue of law involved; (2) the question is one where there is substantial ground for difference of opinion; and (3) an immediate appeal will “materially advance the ultimate termination of the litigation.” *Nguyen v. Am. Commercial Lines L.L.C.*, 805 F.3d 134, 138 (5th Cir. 2015).

When deciding whether an interlocutory appeal would materially advance the litigation, the Court examines whether an immediate appeal would “(1) eliminate the need for trial, (2) eliminate complex issues so as to simplify the trial, or (3) eliminate issues to make discovery easier and less costly.” *Coates v. Brazoria County, Tex.*, 919 F. Supp. 2d 863, 867 (S.D. Tex. 2013); *Abecassis v. Wyatt*, 2014 WL 5483724, *5 (S.D. Tex. Oct. 29, 2014).

In this case, Ocwen has failed to demonstrate that an immediate appeal from Judge Isgur's orders regarding the CFPB Transcripts will materially advance the ultimate termination of the underlying adversary proceeding. Ocwen argues that an immediate appeal will make discovery easier and less costly. *See* Motion, p. 12. Ocwen's argument is based on its belief that the Greens and their attorney will fail to comply with Judge Isgur's restrictions regarding the use of the CFPB Transcripts and the information therein. There is no showing, however, that either the Greens or their attorney are inclined to violate Judge Isgur's orders regarding prohibited uses of the information in the CFPB Transcripts. As a result, Ocwen has failed to show that the requested interlocutory appeal will materially advance the ultimate resolution of the adversary proceeding. The Motion, to the extent it is based on § 158(a)(3), is denied.

III. APPEAL PURSUANT TO COLLATERAL ORDER DOCTRINE

Ocwen also seeks leave to appeal pursuant to the collateral order doctrine, which originated with the Supreme Court's decision in *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541 (1949). The Supreme Court has repeatedly stressed that the collateral order doctrine "must never be allowed to swallow the general rule that a party is entitled to a single appeal, to be deferred until final judgment has been entered." *Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 106 (2009) (citing *Digital Equipment Corp. v. Desktop Direct, Inc.*, 511 U.S. 863, 868 (1994); *Will v. Hallock*,

546 U.S. 345, 350 (2006) (“emphasizing [the collateral order doctrine’s] modest scope”). This admonition recognizes that allowing piecemeal appeals before final judgment “undermines efficient judicial administration.” *Id.* “The justification for immediate appeal must therefore be sufficiently strong to overcome the usual benefits of deferring appeal until litigation concludes.” *Id.* at 107.

To support an appeal under the collateral order doctrine, the order “must (1) conclusively determine the disputed question, (2) resolve an important issue completely separate from the merits of the action, and (3) be effectively unreviewable on appeal from a final judgment.” *Netsphere, Inc. v. Baron*, 799 F.3d 327, 334-35 (5th Cir. 2015). In determining whether to apply the collateral order doctrine in a particular case, the Court does not “engage in an individualized jurisdictional inquiry.” *Mohawk*, 558 U.S. at 107 (citing *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 473 (1978)). Instead, the Court’s focus “is on the entire category to which a claim belongs.” *Id.* (citing *Digital Equipment*, 511 U.S. at 868); *see also Henry v. Lake Charles Am. Press, L.L.C.*, 566 F.3d 164, 173 (5th Cir. 2009) (“instead of making these [collateral order doctrine] decisions on a case-by-case basis, we make them on a type-of-order-by-type-of-order basis”). “As long as the class of claims, taken as a whole, can be adequately vindicated by other means, the chance that the litigation at hand might be speeded, or a particular unjustic[e] averted, does not

provide a basis for jurisdiction” under the collateral order doctrine. *Mohawk*, 558 U.S. at 107 (internal quotations and citation omitted).

The “class of collaterally appealable orders must remain narrow and selective in its membership.” *Id.* at 113. Pretrial discovery orders are generally not within the small class of orders immediately reviewable under the collateral order doctrine. *See id.* at 108; *Vantage Health Plan, Inc. v. Willis-Knighton Med. Ctr.*, 913 F.3d 443, 449 (5th Cir. 2019).

Initially, there has been no conclusive determination of the CFPB Transcripts disclosure issue. Judge Isgur has been dealing with the issue for months, and has entered three separate orders addressing whether, to what extent, and under what conditions the CFPB Transcripts must be turned over to Plaintiffs’ counsel. In the July Order, Judge Isgur gave Ocwen an opportunity to designate portions of the CFPB Transcripts to be protected from disclosure. *See* July Order, p. 2. Ocwen has filed its designations, and whether the designated portions of the CFPB Transcripts should be protected remains before Judge Isgur for decision. As a result, the challenged orders do not satisfy the first requirement for an immediate appeal under the collateral order doctrine.

Additionally, regarding the non-reviewability requirement, the Supreme Court’s decision in *Mohawk* is analogous and persuasive. In *Mohawk*, the Supreme Court held

that disclosure orders that allegedly violate the attorney-client privilege are not immediately reviewable under the collateral order doctrine. *See Mohawk*, 558 U.S. at 108. In that case, as here, the party seeking to appeal argued that disclosure of the subject information would have a chilling effect on the willingness of individuals to speak freely and openly – with the individual’s attorney in *Mohawk* and with government agency investigators in this case. *See id.*; Ocwen’s Objection to Production of CFPB Transcripts [Doc. # 35 in Adv. Case No. 18-3351], p. 12. The Supreme Court in *Mohawk*, while recognizing the importance of the attorney-client privilege in encouraging full and frank disclosures, held that the proper focus is whether “deferring review until final judgment so imperils the interest as to justify the cost of allowing immediate appeal of the entire class of relevant orders.” *See Mohawk*, 558 U.S. at 108. The Supreme Court noted that litigants are routinely forced to wait until final judgment “to vindicate valuable rights, including rights central to our adversarial system.” *See id.* at 109. The Supreme Court held that “Appellate courts can remedy the improper disclosure of privileged material in the same way they remedy a host of other erroneous evidentiary rulings.” *Id.* Similarly, in this case, the Court on appeal from a final judgment can review Judge Isgur’s decision regarding the discoverability of the CFPB Transcripts and, if that decision was wrong, can vacate any judgment against Ocwen that is based on the information in the transcripts.

Ocwen argues that Judge Isgur's orders are effectively unreviewable on appeal because, before final judgment is entered, "Plaintiffs likely will have wrongfully disseminated the Transcripts to an extent that cannot be undone." *See* Motion, p. 14. The Court anticipates that Judge Isgur will impose adequate safeguards to protect any confidential information in the CFPB Transcripts, and this Court expects the Greens and their counsel to comply fully with Judge Isgur's orders. Ocwen's subjective fears that the Greens or their counsel will violate Judge Isgur's orders does not render those orders effectively unreviewable, and it is not a basis for an immediate appeal under the collateral order doctrine.

Ocwen cites cases in which the United States Court of Appeals for the District of Columbia has applied the collateral order doctrine to permit an immediate appeal. The Court finds those cases, and a recent Fifth Circuit case, distinguishable. In *Al Odah v. United States*, the D.C. Circuit permitted an immediate appeal of a district court order requiring disclosure of unredacted classified material to enemy combatants held at Guantanamo Bay, Cuba, where the disclosure was ordered without adequate findings and over the Government's objection. *See Al Odah v. United States*, 559 F.3d 539, 543-44 (2009). In this case, the information in the CFPB Transcripts is not classified; indeed, it is possibly no longer "confidential information" as defined by 12

C.F.R. § 1070.2(f). Additionally, there is no indication that CFPB objects to the disclosure as described in Judge Isgur's orders.

In *United States v. Rayburn House Office Bldg.*, the D.C. Circuit permitted an immediate appeal from the denial of a motion seeking return of materials seized from the office of a sitting Member of Congress in violation of the Congressman's rights under the Speech and Debate Clause. *See United States v. Rayburn House Office Bldg.*, 497 F.3d 654, 659 (D.C. Cir. 2007). In that case, the D.C. Circuit found the fundamental guarantees of the Speech and Debate Clause support an immediate appeal under the collateral order doctrine of the class of orders allegedly violating that Clause. *See id.* The federal regulations applicable to disclosure of CFPB confidential information do not involve similar fundamental guarantees that impact the separation of powers within the United States government.

The Fifth Circuit recently applied the collateral order doctrine to permit an immediate appeal by a nonparty from an order allowing its confidential business documents to be filed unsealed. *See Vantage Health Plan, Inc. v. Willis-Knighton Med. Ctr.*, 913 F.3d 443, 448 (5th Cir. 2019). In that case, the Fifth Circuit held that sealing and unsealing orders are a class of orders reviewable under the collateral order doctrine. *See id.* In that case, however, the order allowed a nonparty's confidential

information to be filed unsealed as part of the public record. Judge Isgur has not issued such an order in this case.

In conclusion, the CFPB Transcript Orders issued by Judge Isgur have not completely and conclusively decided the extent of disclosure or the protective safeguards under which some or all of the CFPB Transcripts will be disclosed to the Greens and their counsel. Additionally, Judge Isgur's orders are not within that small category of orders that resolve important questions and that are effectively unreviewable on appeal from a final judgment. Consequently, the collateral order doctrine does not apply to permit an immediate appeal.

IV. CONCLUSION AND ORDER

Ocwen has failed to demonstrate that an immediate appeal from the CFPB Transcripts Orders would materially advance the ultimate termination of the underlying adversary proceeding. As a result, an interlocutory appeal pursuant to § 158(a)(3) is not warranted.

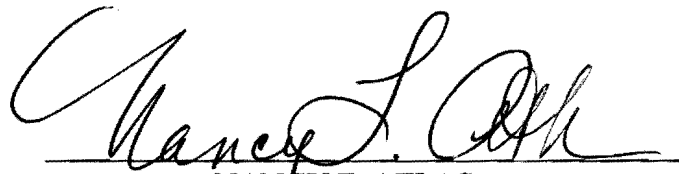
The CFPB Transcripts Orders do not conclusively determine the extent to which the Transcripts are to be turned over to the Greens' attorney or the conditions under which disclosure is required. Additionally, the CFPB Transcripts Orders do not involve important questions that are effectively unreviewable on appeal after final judgment. Therefore, the collateral order doctrine is inapplicable, and it is hereby

ORDERED that the Motion for Leave to File Interlocutory Appeal [Doc. # 2] is **DENIED**. It is further

ORDERED that the Motion for Stay Pending Appeal [Doc. # 4] is **DENIED AS MOOT**. It is further

ORDERED that this civil action is **TERMINATED**.

SIGNED at Houston, Texas, this **26th** day of **August, 2019**.



NANCY F. ATLAS
SENIOR UNITED STATES DISTRICT JUDGE

IV	JOINT DISCOVERY / CASE MGT PLAN	TAB
		4

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

IN RE:	§	
	§	
LARRY AND EDRIS GREEN	§	CASE NO. 12-38016
	§	
DEBTORS	§	
	§	
LARRY AND EDRIS GREEN	§	
	§	
PLAINTIFFS	§	
	§	
v.	§	ADVERSARY NO. 18-03351
	§	
OCWEN LOAN SERVICING, LLC	§	
DEFENDANT	§	

JOINT DISCOVERY/CASE MANAGEMENT PLAN

Pursuant to Rule 7026 of the Federal Rules of Bankruptcy Procedure, which incorporates Federal Rule of Civil Procedure 26(f)), and this Court’s Order (Docket No. 2), the parties conferred and submit this Joint Discovery/Case Management Plan as follows:

1. State where and when the meeting of the parties required by Rule 26(f) was held, and identify the counsel who attended for each party.

A video conference via Facetime was held on December 31, 2018, at 4:37 pm between the following:

**Counsel for Plaintiff:
Miriam Gooft
SBN 24048846
P.O. Box 61301
Houston, Texas 77208
Phone: 713.956.5577
Fax: 713.956.5570
mgooft@walkerandpatterson.com**

Counsel for Defendant:

Charles R. Curran
ccurran@settlepou.com
Texas Bar I.D. 24076334
Southern District No. 1241722
SettlePou
3333 Lee Parkway, Eighth Floor
Dallas, Texas 75219
(214) 520-3300 Phone
(214) 526-4145 Fax

2. List the cases related to this one that are pending in any state or federal court with the case number and court.

In re Green – Case No. 12-38016, Bankruptcy Court for the Southern District of Texas

3. Specify the allegation of federal jurisdiction.

The parties agree that this Court has jurisdiction over this matter pursuant to 28 U.S.C. § 157, and that this matter is a core proceeding pursuant to 28 U.S.C § 157(b)(2)(A) , that venue is proper pursuant to 28 U.S.C. § 1409(a).

4. Future Discovery Disputes

The parties discussed how they will address potential discovery disputes in the future. The parties have agreed that before either party files an emergency motion for a discovery conference, each party will first email opposing counsel a detailed explanation of the discovery dispute, specifying each discovery request and why the response or objection is insufficient, and give opposing counsel seven days to seek to resolve the dispute without Court intervention.

5. List anticipated additional parties that should be included, when they can be added, and by whom they are wanted.

None at this time.

6. List anticipated interventions.

None anticipated at this time.

7. State whether each party represents that it has made the initial disclosures required by Rule 26(a). If not, describe the arrangements that have been made to complete the disclosures.

Plaintiffs made their Initial Disclosures on December 27, 2018.

Defendant will make its Initial Disclosures on or before January 10, 2019.

8. Describe the proposed agreed discovery plan, including:

A. Subjects on Which Discovery May Be Needed:

- a. **At this time the Plaintiffs will seek discovery related to the servicing of their home mortgage loan, during and after the completion of their chapter 13 bankruptcy. Plaintiffs will also seek discovery related to the Defendant's compliance with nationwide bankruptcy court orders for the last five years, including transcripts related to servicing loans in bankruptcy. In addition, the Plaintiffs will seek information related to the Defendants' computer system/software used to service loans in bankruptcy.**
- b. **The Defendant will seek discovery related to Plaintiffs' allegations and causes of actions asserted in Plaintiffs' Amended Complaint (Docket No. 6), Plaintiffs' claimed damages, and discovery from any of Plaintiffs' designated expert.**

B. Disclosure, Discovery, or Preservation of Electronically Stored Information

- a. **The parties agree to exchange documents in in PDF format.**

C. Responses to all the matters raised in Rule 26(f).

- a. **The Parties have discussed the required Conference Content matters and have a proposed Discovery Plan under which discovery would be completed by October 1, 2019. All discovery requests would need to be served so that the response is due by this deadline.**

b. Any Motion for summary judgment shall be filed on or before December 3, 2019.

c. The party with the burden of proof on a particular issue for which expert testimony may be offered shall designate its expert and provide a report by 5:00 PM on April 5, 2019. The responding party shall designate its expert(s) and provide a report by 5:00 PM on May 7, 2019.

d. The parties shall file a Joint Pretrial Statement by January 27, 2020.

9. If the parties are not agreed on a part of the discovery plan, describe the separate view and proposals of each party.

None.

10. Specify the discovery beyond initial disclosures that has been undertaken to date.

None.

11. Describe the possibilities for a prompt settlement or resolution of the case that were discussed in your Rule 26(f) meeting.

The parties discussed the potential for settlement of this matter.

12. From attorneys' discussion with the client, state the alternative dispute resolution techniques that are reasonably suitable, and state when such a technique may be effectively used in this case.

The parties are both amenable to mediation, but were unable to determine a date by which the mediation must take place.

13. Specify the number of hours it will take to present the evidence in this case.

Plaintiffs assert that it will take approximately 8 hours to present the evidence in this case.

Defendant asserts that it will take approximately 8 hours to present evidence in this case.

14. List pending motions that could be ruled on at the initial pretrial and scheduling conference.

None.

15. List other motions pending.

None at this time.

16. Indicate other matters peculiar to this case, including discovery that deserve the special attention of the court at the conference.

PLAINTIFFS' CONTENTIONS:

The Plaintiffs believe that there are three areas of discovery that deserve the special attention of the court at the conference.

1) Plaintiffs seek a copy of all transcripts (deposition, hearing, or witness statements) that were specifically referenced in the complaint filed by the Consumer Financial Protection Bureau ("CFPB") on April 20, 2017, against Ocwen Loan Servicing, Inc. in Case No. 9:17 CV-80495 in the Southern District of Florida, West Palm Beach Division (the "Complaint"). The CFPB specifically referenced in the Complaint that in June, 2016, Ocwen's Head of Bankruptcy testified, "that more than 22,000 borrowers in bankruptcy were impacted by Ocwen's failure to conduct a timely escrow analysis and that Ocwen is currently attempting to remediate these borrowers."

A copy of the CFPB Complaint, Docket sheet, and contact information for Ocwen's counsel in the CFPB litigation has been provided to Mr. Curran, Ocwen's counsel in this adversary proceeding.

2) The Plaintiffs also request that the Defendant identifies (by case number/district) all bankruptcy cases, within the last three years, where the Defendant was sanctioned for failing to comply with a bankruptcy court order.

3) The Plaintiffs request that the Defendant identifies (by case number/district) all cases, within the last three years, where the Defendant was sued by a chapter 13 debtor in bankruptcy court for failing to comply with a bankruptcy court order.

DEFENDANT'S CONTENTIONS:

Defendant contends that such issues are better and more appropriately addressed after formal discovery requests are received and Defendant has the time allowed by the Federal Rules of Bankruptcy Procedure 7032 to 7036 to determine the existence of any such documents or information and make any appropriate, specific objections to the discovery. To address them now would deprive Defendant of the time allowed by the Federal Rules of Bankruptcy and Civil Procedure to respond to such requests and further deprives Defendant of its rule-imposed opportunity to make the all of its appropriate, specific objections allowed under the rules.

V	CERTIFICATE OF SERVICE	TAB 5
----------	-------------------------------	------------------------

CERTIFICATE OF SERVICE

We hereby certify that, on May 6th, 2020, a true and correct copy of the foregoing Record Excerpts was served via the Court's EM/ECF system to the attorneys of record per the CIP listing enclosed herein.

s/ Joanna Burke

JOANNA BURKE

s/ John Burke

JOHN BURKE