



The following constitutes
the order of the court. Signed June 1, 2016

A handwritten signature in black ink that reads "Stephen L. Johnson".

Stephen L. Johnson
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re:

MARSHA HOWARD,

Debtor.

Case No. 10-52527 SLJ

Date: April 21, 2016

Time: 10:00 a.m.

Ctrm: 3099

**ORDER GRANTING IN PART AND DENYING IN PART MOTION TO DEEM
MORTGAGE CURRENT**

Debtor's Motion to Deem Mortgage Current ("Motion") came on for hearing at the above-referenced date and time. Appearances were noted on the record. After hearing arguments from counsel, the court took the matter under submission. For the following reasons, the court will grant the Motion in part and deny in part.¹

¹ The findings and conclusions in this Order supercedes and replaces the court's tentative ruling made orally on the record at the hearing.

1 **I. BACKGROUND**

2 The relevant facts are not disputed. Debtor filed a voluntary petition under Chapter 13
3 of the Bankruptcy Code on March 15, 2010.² The schedules disclosed that Debtor has an
4 ownership interest in real property located at 240 Pacific Street, Brookdale, California
5 (“Property”). The Property is encumbered by a senior lien in favor of PNC Mortgage (“PNC”
6 or “Creditor”) in the approximate amount of \$705,524. The confirmed plan provided that
7 mortgage arrears in the amount of \$26,760.70³ would be paid through the plan and that Debtor
8 would make on-going mortgage payments of \$3,023.00 per month directly to PNC.

9 On January 13, 2016, the chapter 13 trustee (“Trustee”) filed a Notice of Final Cure
10 Payment (“Notice”) pursuant to Bankruptcy Rule 3002.1(f), stating that the claim of PNC in the
11 amount of \$26,760.70 has been paid in full by the Trustee. The Notice further states:

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13 Within 21 days of the service of the Notice of Final Cure Payment, the
14 creditor MUST file and serve a Statement as a supplement to the holder’s proof of
15 claim on the Debtor, Debtor’s Counsel and the Chapter 13 Trustee, pursuant to
16 Fed.R.Bank.P. 3002.1(g), indicating 1) whether it agrees that the Debtor has paid
17 in full the payment required to cure the default on the claim; and 2) whether the
18 Debtor is otherwise current on all payments consistent with 11 U.S.C. §
19 1322(b)(5).

20 The statement shall itemize the required cure or post-petition amount, if
21 any, that the holder contends remain unpaid as of the date of the statement. The
22 statement shall be filed as a supplement to the holder’s proof of claim and is not
23 subject to Rule 3001(f). Failure to notify may result in sanctions. (Emphasis
24 added).

25 Despite these instructions, on February 2, 2016, PNC’s counsel Peter Van Zandt filed a
26 Response to Notice of Final Cure Payment (“First Response”) on the court’s docket rather than
27 as a supplement to PNC’s proof of claim. As with all of PNC’s responses, PNC used Official
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26 ² Unless specified otherwise, all chapter, code and rule references are to the Bankruptcy Code,
27 11 U.S.C. §§ 101-1532, and the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

28 ³ The amount of arrears in the confirmed plan is identical to the amount in PNC’s proof of
claim.

1 Form 4100R.⁴ In the First Response, PNC disagreed with the Notice and asserted that total
2 prepetition amount of \$20,712 remained unpaid. At the same time, PNC stated that Debtor was
3 current with all postpetition payments, including all fees, charges, expenses, escrow, and costs.
4 No itemized statement was attached to the First Response breaking down the alleged cure
5 amount of \$20,712. The First Response was signed by Mr. Van Zandt, as PNC's authorized
6 agent, under penalty of perjury and dated February 2, 2016.

7 The very next day, February 3, 2016, Mr. Van Zandt filed another Response to Notice of
8 Final Cure Payment ("Second Response") on the court's docket. Mr. Van Zandt did not
9 identify the Second Response as an amendment to the First Response. In the Second Response,
10 PNC stated that it agreed with the Notice indicating that Debtor has paid in full the prepetition
11 arrears and was current on all postpetition obligations. Mr. Van Zandt signed the Second
12 Response under penalty of perjury on February 3, 2016.

13 Two days later, on February 5, 2016, Mr. Van Zandt filed yet another Response to
14 Notice of Final Cure Payment ("Third Response") on the court's docket. This time PNC
15 alleged that whereas Debtor had paid the prepetition arrears in full, Debtor was delinquent on
16 postpetition mortgage payments in the amount of \$674,693.60 and outstanding fees, charges,
17 expenses, escrow, and costs in the amount of \$62,623.90, for a total of \$737,317.50. No
18 itemized statement was attached to the Third Response. Mr. Van Zandt also signed the Third
19 Response under penalty of perjury.

20 On February 10, 2016, Debtor filed this Motion, in which Debtor requested the court to
21 strike all three responses filed by PNC, award attorney's fees, and deem the mortgage
22 postpetition current, pursuant to Bankruptcy Rule 3002.1(i). Particularly, Debtor alleged that
23 she could not respond to PNC's allegations because none of three dissimilar responses was
24 supported by an itemization as required under Bankruptcy Rule 3002.1(g).

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27 ⁴ Official Form 4100R requires, if a creditor claims that a debtor is not current on postpetition
28 payments, that creditor disclose (1) all ongoing postpetition payments due, (2) total fees,
charges, expenses, escrow, and costs outstanding, and (3) an itemization of such expenses.
Neither party contended that the form was a misapplication of Rule 3002.1.

1 PNC filed a timely opposition in which it asserted that it timely filed a response to the
2 notice of final cure payment. PNC also alleged that the response was correct in that Debtor has
3 paid in full her prepetition arrears but Debtor has outstanding postpetition obligations in the
4 amount of \$62,623.90. Although it appeared PNC was relying on the Third Response, it did not
5 mention the outstanding postpetition mortgage payments of \$674,693.60. While PNC
6 acknowledged that it did not include an itemized statement of the postpetition charges, it
7 asserted that such omission was harmless because Mr. Van Zandt sent a copy of the itemized
8 statement to Debtor's counsel on February 3, 2016. PNC contended in its opposition that
9 deeming the mortgage current would be an arbitrary and punitive sanction because the
10 \$62,623.90 that PNC sought arose from property taxes and insurance that PNC paid on Debtor's
11 behalf. Notably, PNC did not object to the request for attorney's fees.

12 At the hearing on the Motion on March 17, 2016, Mr. Van Zandt did not appear. When
13 the court contacted Mr. Van Zandt's law firm, another attorney by the name of Greg Mascitti
14 appeared telephonically. He had no knowledge of the case and informed the court that Mr. Van
15 Zandt was in trial at another court. For reasons stated at the hearing, the court sanctioned Mr.
16 Van Zandt the attorney's fees and costs incurred by Debtor's counsel for appearing at the
17 hearing.⁵ Furthermore, as set forth in the Order for Further Briefing and Sanctions against
18 Counsel for PNC Bank, entered on March 23, 2016, the court ordered PNC to file a
19 supplemental brief addressing the following issues: (1) which of the three responses filed by
20 PNC is the operative document; (2) the factual basis for the postpetition amount due of
21 \$674,693.60 in PNC's Third Response (the amount appears to be the entire principal of the
22 loan); and (3) the circumstances under which Mr. Van Zandt filed the Second Response, which
23 showed Debtor to be current prepetition and postpetition, when on the same day he emailed
24 Debtor's counsel an itemized statement showing \$62,623.90 in escrow charges.

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28 ⁵ According to the Declaration of Peter J. Van Zandt, filed on April 20, 2016, the sanctions was
paid to Debtor's counsel on April 20, 2016.

1 In response to the order for further briefing, Mr. Van Zandt filed a declaration in which
2 he stated the Third Response was the operative response. He admitted it erroneously stated that
3 the full mortgage of \$674,693.60 was due and owing. Mr. Van Zandt justified his errors by
4 explaining that he misunderstood the instructions in the response form and that he does not
5 regularly practice chapter 13 bankruptcy law. Mr. Van Zandt also attached a proposed
6 Response to Notice of Final Cure Payment with itemized statement (“Proposed Response”) to
7 his declaration.

8 Debtor filed a reply, which correctly pointed out that the Proposed Response was not
9 signed by Mr. Van Zandt, even though his name appeared as the person who prepared it, and
10 was not filed. Debtor claimed that PNC changed the escrow amount without any notification to
11 Debtor, as required by Bankruptcy Rule 3002.1. Debtor requested the court to preclude PNC
12 from presenting any evidence of the escrow charges, in addition to deeming the mortgage
13 current and to award attorney’s fees to Debtor.

14 At the hearing on April 21, 2016, the court issued a tentative ruling on the record,
15 stating it would award attorney’s fees to Debtor but would not preclude PNC from introducing
16 evidence of the omitted information because the relief was raised for the first time in Debtor’s
17 reply, the record was scant in terms of whether the omission was harmless, and pursuant to the
18 holding in *In re Tollios*, 491 B.R. 886 (Bankr. N.D.Ill. 2013), Debtor did not appear to be
19 prejudiced.

20 At oral argument, Debtor argued that the request to preclude evidence was, in fact,
21 raised in first paragraph of the Motion in which Debtor requested the court to deem the loan
22 postpetition current. Debtor also contended that PNC began advancing postpetition property
23 taxes and insurance without filing and serving the appropriate notices to Debtor.

24 PNC explained that the Proposed Response was not signed because it did not want to
25 file it without permission from the court.⁶ In responding to Debtor’s arguments, PNC argued

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27 ⁶ By the time of the hearing, a response pursuant to Rule 3002.1(g) would have been untimely
28 because it must be filed within 21 days of Trustee’s Notice, which was filed on January 13,
2016.

1 that the escrow payments included insurance which lapsed, and that Debtor knew PNC was
2 paying the property taxes and insurance. To the extent Debtor contended otherwise, PNC
3 requested an evidentiary hearing. In response to Debtor's argument that Debtor was paying the
4 amounts as specified in various notices of payment change, PNC replied that there was not a
5 substantial change in the payments to PNC for Debtor to believe those payments covered over
6 \$7,000 in taxes and over \$3,000 in insurance premiums that PNC advanced. PNC asserted that
7 the amounts in the various notices of mortgage payment change included only the interest
8 payments so Debtor was not paying down funds advanced by PNC for postpetition property
9 taxes and insurance.

10 At the conclusion of the hearing, Debtor requested an accurate spreadsheet including
11 application of Debtor's payments currently showing as "suspended" by PNC. The court
12 ordered PNC to file a response, signed under penalty of perjury and include a supporting
13 itemized statement, within a week of the hearing, which was April 28, 2016.

14 PNC filed an untimely response on May 25, 2016.

15 **II. DISCUSSION**

16 **A. Bankruptcy Rule 3002.1**

17 As succinctly stated by another bankruptcy court, Bankruptcy Rule 3002.1 "was adopted
18 in December 2011 to address a significant problem caused when mortgage companies applied
19 fees and costs to a debtor's mortgage while the debtor was in bankruptcy without giving notice
20 to the debtor and then, based on these post-petition defaults, sought to foreclose upon the
21 debtor's property after the debtor completed the plan." *In re Tollios*, 491 B.R. at 888.

22 Bankruptcy Rule 3002.1 attempted to solve this problem by requiring the holder of the
23 claim to file and serve notices of payment changes no later than twenty-one days before the new
24 payment is due, and by requiring notices itemizing all postpetition fees, expenses or charges
25 that the holder asserts are recoverable against the debtor or her residence within 180 days after
26 the date on which they are incurred. Fed.R.Bankr.P. 3002.1(b)-(c). It established a procedure
27 for court determination if the debtor objects to the notices within one year. Fed.R.Bankr.P.
28 3002.1(e). On completion of the plan, it allows parties to obtain a determination that the

1 debtor's mortgage is deemed current. Fed.R.Bankr.P. 3002.1(f)-(h). Finally, the rule sets forth
2 the consequences for the failure to provide the notices in subparts (b) and (c) and the response
3 in subpart (g). Fed.R.Bankr.P. 3002.1(i).

4 The parties do not dispute that Bankruptcy Rule 3002.1 applies here. PNC's claim was
5 secured by an interest in Debtor's principal residence, and the Debtor's plan provided for its
6 payment under § 1322(b)(5) of the Bankruptcy Code. See Fed.R.Bankr.P. 3002.1(a).

7 B. Failure to Comply with Bankruptcy Rule 3002.1(g)

8 If a mortgage holder disagrees with the trustee's notice of final cure payment indicating
9 that the debtor is current on postpetition obligations, Bankruptcy Rule 3002.1(g) requires that
10 the holder files a response as a supplement to its proof of claim and to "itemize the required
11 cure or postpetition amounts, if any, that the holder contends remain unpaid as of the date of the
12 statement." Fed.R.Bankr.P. 3002.1(g). The itemization must be sufficiently detailed for a
13 debtor to contest the holder's response under Bankruptcy Rule 3002.1(g). See *In re Carr*, 468
14 B.R. 806, 808 (Bankr. E.D. Va. 2012)("The creditor must respond to that notice [of final cure
15 payment] by acknowledging that it is correct, or if it is not correct, stating *with particularity* the
16 amounts that remain unpaid." (emphasis added)). Furthermore, a response pursuant to
17 Bankruptcy Rule 3002.1(g) "must be signed by the holder under penalty of perjury." *In re*
18 *Nieves*, 499 B.R. 222 (Bankr. D.P.R. 2013).

19 PNC does not dispute that none of its three responses include an itemized statement as
20 required by Bankruptcy Rule 3002.1(g). *PNC Bank, National Association's Opposition to*
21 *Debtor's Motion to Deem Mortgage Current*, filed on March 7, 2016, p. 2: 25-26. The
22 Proposed Response, which was attached to the Declaration of Peter J. Van Zandt as an exhibit,
23 included an itemized statement but was not signed. At the hearing on April 21, 2016, PNC's
24 counsel represented to the court that she did not want to file a signed response until PNC
25 received permission from the court to file another response. The court gave PNC a deadline of
26 April 28, 2016, to file a proper response that was signed under penalty of perjury and included
27 the appropriate itemized statement. PNC failed to do so. Instead, PNC belatedly filed a
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1 response on May 25, 2016.⁷ It did not request an extension of time or provide any explanation
2 why the response was filed almost a month after the court-imposed deadline.

3 For these reasons, the court finds that PNC failed to provide information required under
4 Rule 3002.1(g).

5 The court notes that during oral argument, the parties argued extensively whether PNC
6 filed the appropriate notices under Rule 3002.1(c) during the pendency of this case and PNC
7 requested an evidentiary hearing on this issue. PNC's compliance with Rule 3002.1(c), or lack
8 thereof, is not relevant. Debtor made the Motion under Rule 3002.1(i) for failure to comply
9 with Rule 3002.1(g). The record is clear that PNC did not comply with Rule 3002.1(g), and
10 PNC admitted as much.

11 C. Sanctions pursuant to Bankruptcy Rule 3002.1(g)

12 Bankruptcy Rule 3002.1(i) provides the sanctions available if a secured creditor fails to
13 file a proper response with the necessary information set forth in Rule 3002.1(g). It states that
14 the court may preclude the creditor from presenting "the omitted information, in any form, as
15 evidence in any contested matter or adversary proceeding in the case, unless the court
16 determines that the failure was substantially justified or is harmless," and/or "award other
17 appropriate relief, including reasonable expenses and attorney's fees caused by the failure."
18 Fed.R.Bankr.P. 3002.1(i).

19 Debtor in this case requests several forms of sanctions, including attorney's fees,
20 striking the filed responses for their non-compliance with Rule 3002.1(g), deeming the
21 mortgage current, and precluding PNC from presenting evidence of the alleged outstanding
22 postpetition obligations in future proceedings. The court will discuss each of these in turn.

23 1. Request for Attorney's Fees

24 The award of attorney's fees is more than justified in this case. Within a span of four
25 days, PNC filed three responses to Trustee's Notice that were confusing and inaccurate. None
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28 ⁷ The latest response was again incorrectly filed on the docket, instead of as a supplement to
PNC's proof of claim, as required by Rule 3002.1(g).

1 of the responses included an itemized statement as required by Rule 3002.1(g) so neither the
2 court nor Debtor could verify the amounts stated in the responses. Debtor and her attorney had
3 to expend time, energy, and efforts to get an accurate itemization of the alleged amount owed
4 postpetition, including the filing of this Motion, when it was PNC's duty to file an accurate
5 response and itemized statement. The court further notes, for the record, that PNC did not
6 oppose the award of attorney's fees in its written opposition and during oral argument. Under
7 the circumstances, the court will award attorney's fees to Debtor.

8 2. Request to Strike Responses

9 Debtor's request to strike the First Response, the Second Response, and the Third
10 Response filed on the court's docket will also be granted. As Mr. Van Zandt stated in his
11 declaration, filed on April 7, 2016, all three responses were incorrect and did not accurately
12 reflect what PNC alleged is owed postpetition. An inaccurate response under Rule 3002.1(g)
13 complies neither with the letter nor the spirit of Rule 3002.1 and defeats the very purpose for
14 which Rule 3002.1 was enacted.

15 3. Preclusion of Evidence

16 Debtor in its Motion sought an order deeming the mortgage current. Rule 3002.1(i)(1)
17 authorizes an order precluding the introduction of evidence but it does not specifically authorize
18 an order determining that a mortgage obligation is current.⁸ In response, Debtor's counsel
19 contended that she sought an order precluding PNC from introducing evidence of the
20 \$62,623.90 in escrow charges in future proceedings in the first paragraph of the Motion. PNC's
21 counsel (at oral argument, but not in its papers) indicated that the Motion did not ask for an
22 order precluding the introduction of evidence.⁹

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24 ⁸ It is worth observing that the effect of deeming a mortgage current and precluding the
25 introduction of evidence that it is not current would point to the same conclusion: Debtor is
26 current on a loan.

27 ⁹ PNC's written opposition belies the assertion by its counsel at the hearing that PNC read the
28 Motion as requesting only the award of attorney's fees. In the opposition, PNC argued that its
omission of the itemized statement is harmless and that "it would be an unmeasured, arbitrary,
and punitive sanction to award Debtor a windfall in the amount of \$62,623.90 . . ."

1 I find PNC has had sufficient notice and an opportunity to respond on this issue. Under
2 Rule 3002.1(i)(1), the court can preclude the introduction of evidence. A party like PNC can
3 avoid this conclusion by showing that its actions were substantially justified or harmless.
4 Fed.R.Bankr.P. 3002.1(i)(1). PNC asserted the harmless defense in both its written
5 opposition and at oral argument. Because the harmless defense is applicable only to the
6 preclusion of evidence relief, PNC had the opportunity and in fact did argue against the
7 preclusion of evidence by raising the defense available under subpart (1).

8 I find that precluding the introduction of evidence here would be consistent with the
9 purpose of Rule 3002.1. “The rule is intended to provide the mortgagor-debtor information
10 necessary to determine the *exact amount* needed to cure any prepetition arrearage and the
11 amount of the postpetition payments.” Report of the Judicial Conference Committee on Rules
12 of Practice and Procedure to the Chief Justice of the United States and Members of the Judicial
13 Conference of the United States: Federal Rules of Bankruptcy Procedure (September
14 2010)(emphasis added). PNC’s actions defeat the purpose of Rule 3002.1. It repeatedly filed
15 inaccurate responses without any support in the form of an itemized statement. The court gave
16 PNC one last opportunity to file an accurate response that complies with Rule 3002.1(g), but
17 despite PNC’s counsel’s representation at the hearing that this matter has PNC’s “undivided
18 attention,” PNC ignored the deadline set by the court and filed a response almost a month after
19 the deadline.

20 In short, despite three attempts at filing a response, a motion for sanctions from Debtor,
21 an oral order from the court, and assurances from PNC’s counsel, PNC continued its repeated
22 failure to comply.

23 PNC cites to *In re Tollios*, 491 B.R. 886, for the proposition that the omission here is
24 harmless. *Tollios* is clearly distinguishable. In that case, the debtors filed a motion under Rule
25 3002.1(i) based on Chase’s alleged failure to comply with Rule 3002.1(b). Specifically, debtors
26 alleged that Chase violated the rule because the notice of payment change was not filed with the
27 court and was not served on debtors’ attorney and the chapter 13 trustee, although the notice
28 was sent to debtors. Chase increased debtors’ monthly payments because debtors failed to pay

1 their property taxes and Chase paid them. Debtors did not pay the increased escrow amount
2 and acknowledged that they could not afford to pay the property taxes. In seeking sanctions
3 under Rule 3002.1(i), debtors requested, among other things, that their loan be deemed current
4 and that the original escrow amount, which included only insurance payments and not property
5 taxes, be reinstated for the life of the loan. As paraphrased by the court, “[i]n effect, the debtors
6 seek a determination that they are not liable for the taxes that Chase has paid on their behalf, or
7 for any taxes that will be owed in the future, because of Chase’s failure to file and properly
8 serve the notice of the increase in the monthly payment.” *Tollios*, 491 B.R. at 888.

9 In deciding that the failure was harmless, the court explained that debtors knew they had
10 to pay the property taxes but did not pay them, they received the notice from Chase of the
11 increase in escrow amount, the plan required debtors to make direct payments to Chase so the
12 failure to notify the trustee had no impact, and lastly debtors admitted they could not afford to
13 pay the property taxes. In other words, irrespective of whether Chase filed a proper notice,
14 debtors could not have paid the property taxes or the increased escrow payments.

15 The circumstances here are different. Debtor does not seek to avoid her past or future
16 tax liability. During oral argument, Debtor’s counsel stated that Debtor made payments to PNC
17 in an amount as indicated in various notices of payment change filed by PNC in this case, an
18 assertion that was not disputed by PNC. Debtor’s position is that these payment changes
19 included escrow payments for taxes and insurance. So if Debtor had been paying the amount as
20 directed by PNC, there should not be a shortfall of \$62,623.90 in escrow charges at the end of
21 the plan. Debtor simply wanted an itemized statement so she could find out why there was a
22 shortfall. It was only as a last resort due to PNC’s repeated failure to include an itemized
23 statement to support its Rule 3002.1(g) response that Debtor filed this Motion.

24 PNC argued that Debtor knew or should have known that the notices of payment change
25 did not include escrow payments. Specifically, PNC’s counsel stated at the hearing, “It [the
26 payment changes] was similar to the interest payments that [debtor] was paying before that.
27 There wasn’t a substantial change that should have given anyone the belief that over \$7,000 in
28 taxes and insurance premiums of \$3,000 would have included in that payment. That would have

1 been an increase of nearly \$800 a month from the prepetition payments and there was no such
2 increase.”

3 This argument contradicts the record of this case. According the confirmed plan, the
4 mortgage payment was \$3,023 per month, at least as of the time of confirmation on December
5 16, 2010. On August 14, 2012, PNC filed the first of four Notice of Mortgage Payment
6 Change, indicating that the new payment was \$1,897.59, which did not include any escrow
7 payments. On November 16, 2012, PNC filed a second Notice of Mortgage Payment Change,
8 which shows an increase in escrow payment from \$787.59 per month to \$4,145.05 per month.¹⁰
9 On August 14, 2013, PNC filed a third Notice of Mortgage Payment Change, which does not
10 show any change in escrow payment but principal and interest payment decreased from
11 \$1,897.58 to \$1,616.45. Based on the total new payment of \$2,389.02, the escrow payment at
12 the time of this third notice would have been \$772.57 (\$2,389.02 - \$1,616.45). On December
13 11, 2013, PNC filed the last Notice of Mortgage Payment Change, showing an increase in
14 escrow payment from \$772.57 to \$1,153.76.

15 Given that PNC was expressly charging escrow payments ranging from \$772.57 to
16 \$4,145.05 since 2012, PNC’s argument that Debtor knew the payment changes did not include
17 escrow for insurance and tax payments is unpersuasive.

18 PNC provided numerous explanations for its failure to file appropriate notices under
19 Rule 3002.1(b) and (c), such as it was attempting to resolve the matter informally with Debtor
20 and it was considering a loan modification, but none of these explains why PNC did not file an
21 accurate response with an itemized statement signed under the penalty of perjury, as required by
22 Rule 3002.1(g). Mr. Van Zandt’s explanation that he was “inexperienced” with the form is
23 hardly justifiable because, under Part 4 of the form, in plain non-legal language, it provides that
24 if the creditor states that the debtors are not current with all postpetition payments, “including
25 all fees, charges, expenses, escrow, and costs, the creditor *must attach an itemized payment*
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28 ¹⁰ PNC did not file any notices commencing the escrow payments of \$787.59 per month.

1 history disclosing the following amounts from the date of the bankruptcy filing through the date
2 of this response.” *Official Form 4100R*.

3 The omission of the itemized statement is not harmless. “[Rule 3002.1] creates a
4 procedure that requires the creditor to respond to a notice by the trustee with a statement that
5 the plan was either completed satisfactory, or there are disagreements to be resolved by the
6 court on request of the debtor or trustee.” *In re Kreidler*, 494 B.R. 201, 203 (Bankr. M.D.Pa.
7 2013). PNC made a mockery of this procedure. By filing three wildly inaccurate responses
8 within a span of three days, together with the fact that Debtor made escrow payments in an
9 amount provided by PNC, Debtor justifiably wanted to see an accurate itemized statement so
10 she could determine whether she disagreed with PNC’s calculation. To the extent that she
11 disagreed, Debtor was entitled to file a motion under Rule 3002.1(h) to have the matter resolved
12 by the court. PNC’s lack of compliance makes this determination impossible.

13 PNC’s assertion of “no harm no foul” based on its counsel emailing an itemized
14 statement to Debtor’s counsel is meritless. An email is not submitted under penalty of perjury
15 as the court-filed form would be. Moreover, Debtor could not contest the itemized statement
16 because it was never filed as part of the response. As a general matter, if every rule requiring a
17 party to file a document can be satisfied simply by sending it to the opposing party, the system
18 of procedures for court filings and service would be rendered useless.

19 4. Request to Deem Mortgage Current

20 Lastly, Debtor requests that the mortgage be deemed current. Rule 3002.1(i)(2), the
21 only subdivision where such relief is addressed, allows the court to “award other appropriate
22 relief.” Case law is scant as to whether deeming the mortgage current constitutes “other
23 appropriate relief.” *See In re Ogden*, 532 B.R. 329, 333 (Bankr. D.Colo. 2014)(“Whether ‘other
24 appropriate relief’ includes the ability to preclude the mortgage holder from later collecting the
25 fees and charges is an open question.”). Debtor did not provide any legal authority for this type
26 of relief.

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ORDER ON MOTION TO DEEM MORTGAGE CURRENT

1 Reading Rule 3002.1 as whole and giving effect to every subpart, deeming a mortgage
2 current under the circumstances here involves a two-step process. First, a debtor may request
3 that the court precludes evidence of the omitted information under Rule 3002.1(i)(1). Second, a
4 debtor may then file a motion for determination that debtor is current postpetition pursuant to
5 Rule 3002.1(h), at which time the creditor would be precluded from presenting the omitted
6 information as evidence. While I recognize that this process will require Debtor to expend
7 additional attorney's fees, it is a more appropriate interpretation of Rule 3002.1 and has a better
8 chance of standing up to judicial scrutiny. I therefore decline to determine the mortgage current
9 now.

10 **III. CONCLUSION**

11 Based on the foregoing analysis, the court finds that PNC failed to comply with
12 Bankruptcy Rule 3002.1(g), and such failure was not harmless. Pursuant to Bankruptcy Rule
13 3002.1(i), the court grants the following relief to Debtor:¹¹

14 1. Debtor is awarded attorney's fees and costs. Debtor's counsel shall file a
15 declaration, with supporting time records, on the amount of fees and costs she expended in this
16 matter no later than fourteen (14) days from the date of entry of this order. If PNC objects to
17 the reasonableness of the fees, it may file an opposition no later than seven (7) days after
18 Debtor's counsel files her declaration. The matter will be deemed submitted at that time.

19 2. The First Response, Second Response, and Third Response are stricken for
20 failure to comply with Bankruptcy Rule 3002.1(g).¹²

21 3. PNC is precluded from presenting evidence, in any form, of the \$62,623.90 in
22 escrow charges in any contested matter or adversary proceeding in this case.

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25 ¹¹ These sanctions flow from PNC's failure to file a response to Trustee's Notice of Final Cure
26 Payment that includes the correct amount supported by an itemized statement. Although PNC
27 did not file its responses as a supplement to its proof of claim, as required under Rule 3002.1(g),
this defect is not actionable under Rule 3002.1(i), which refers only to the failure "to provide
any information" as required by subpart (g).

28 ¹² The response filed on May 25, 2016, is untimely and will not be considered.

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Debtor's request to deem the mortgage current is denied without prejudice to Debtor filing a motion pursuant to Bankruptcy Rule 3002.1(h). The deadline to file such a motion is twenty-one (21) days from the date of entry of this order.

IT IS SO ORDERED.

***** END OF ORDER *****

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COURT SERVICE LIST

[ECF Recipients Only]