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ALAMEDA COUNTY

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SYSTEMS, INC.
8

9 SUPERIOR COURT OF CALIFORNIA

10 COUNTY OF ALAMEDA
11

12 ANTHONY A. MALFATTI,

13 Plaintiff,

14 vs.

15 MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.;
16 SPECIALIZED LOAN SERVICING, LLC;
THE MORTGAGE LAW FIRM, PLC; and
HSBC BANK USA, NATIONAL
ASSOCIATION, AS TRUSTEE FOR
18 DEUTSCHE ALT-A SECURITIES, INC.,
MORTGAGE LOAN TRUST, MORTGAGE
19 PASS-THROUGH CERTIFICATES, SERIES
2007-OA4; and DOES 1-10, inclusive,
21

Defendant.

Case No. RG16808857

**DEFENDANT MORTGAGE
ELECTRONIC REGISTRATION
SYSTEMS, INC.'S NOTICE OF
DEMURRER AND DEMURRER TO
PLAINTIFF'S FIRST AMENDED
COMPLAINT; MEMORANDUM OF
POINTS AND AUTHORITIES**

Accompanying Documents: (1) Request for
Judicial Notice; and (2) Declaration of Jason
M. Richardson served concurrently.

Date: 08/24/2016
Time: 3:00 PM
Dept.: 18
Reservation No. R 1759942

Action Filed: March 23, 2016
Trial Date: N/A

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1 TO PLAINTIFF AND HIS ATTORNEY(S) OF RECORD:

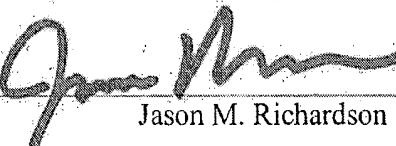
2 PLEASE TAKE NOTICE that on August 24, 2016 at 3:00 p.m., or as soon thereafter as
3 counsel may be heard in Department 18 of the Alameda County Superior Court, located at 1221
4 Oak Street, Oakland, CA 94612 Defendant Mortgage Electronic Registration Systems, Inc.
5 ("MERS") will and hereby does demur to Plaintiff's First Amended Complaint.

6 The demurrer is made pursuant to Code of Civil Procedure section 430.10(e) on the
7 grounds that the complaint fails to state facts sufficient to constitute a cause of action.

8 This demurrer is based upon this notice, the accompanying demurrer, the accompanying
9 memorandum of points and authorities, the accompanying request for judicial notice, the
10 pleadings and papers on file in this action, and upon such further evidence, both oral and
11 documentary, as may be offered at the time of the hearing.

12 DATED: July 15, 2016

SEVERSON & WERSON
A Professional Corporation

14 By: 

15 Jason M. Richardson

16 Attorneys for DEFENDANT MORTGAGE
17 ELECTRONIC REGISTRATION SYSTEMS, INC.

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DEMURRER

Defendant Mortgage Electronic Registration Systems, Inc. (“MERS”) demurs to the First Amended Complaint (“complaint”) filed by Plaintiff Anthony Malfatti (“Plaintiff”) pursuant to California Code of Civil Procedure Section 430.10(e) as follows:

5 1. On grounds that the first cause of action of the complaint fails to state facts
6 sufficient to state a cause of action against MERS for wrongful foreclosure because this claim is
7 barred by the doctrine of res judicata. (Cal. Code Civ. Proc. § 430.10(e).)

8 2. On grounds that the first cause of action of the complaint fails to state facts
9 sufficient to state a cause of action against MERS for wrongful foreclosure because insofar as any
10 foreclosure proceedings have been conducted on the property that is the subject of this action,
11 they have been conducted by entities other than MERS. (Cal. Code Civ. Proc. § 430.10(e).)

12 3. On grounds that the first cause of action of the complaint fails to state facts
13 sufficient to state a cause of action against MERS for wrongful foreclosure because Plaintiff fails
14 to allege any facts to show any irregularity in the foreclosure proceedings that have been initiated
15 by any defendant to prejudice his rights or obligations concerning the property at issue. (Cal.
16 Code Civ. Proc. § 430.10(e).)

17 4. On grounds that the fourth cause of action of the complaint fails to state facts
18 sufficient to state a cause of action against MERS under California Business and Professions
19 Code Section 17200 because this claim is barred by res judicata. (Cal. Code Civ. Proc.
20 § 430.10(e).)

21 5. On grounds that the fourth cause of action of the complaint fails to state facts
22 sufficient to state a cause of action against MERS under California Business and Professions
23 Code Section 17200 because Plaintiff lacks standing to assert this claim: (Cal. Code Civ. Proc.
24 § 430.10(e).)

25 6. On grounds that the fourth cause of action of the complaint fails to state facts
26 sufficient to state a cause of action against MERS under California Business and Professions
27 Code Section 17200 because Plaintiff fails to allege a legal predicate for this attempted claim.

1
2 DATED: July 15, 2016
3

SEVERSON & WERSON
A Professional Corporation

4 By:
5



6 Jason M. Richardson
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11 Attorneys for DEFENDANT MORTGAGE
12 ELECTRONIC REGISTRATION SYSTEMS, INC.
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4 *Ghuman v. Wells Fargo Bank, N.A.*
5 (E.D. Cal. 2013) 989 F. Supp. 2d 9947
6 *Rosal v. First Fed. Bank of Cal.*
7 (N.D. Cal. 2009) 671 F. Supp. 2d 111110
8 *Subramani v. Wells Fargo Bank N.A.*,
9 2013 WL 5913789 (N.D. Cal. Oct. 31, 2013)8

9 **STATE CASES**

- 10 *Aceves v. U.S. Bank*
11 (2011) 192 Cal.App.4th 2189
12 *Berryman v. Merit Prop. Mgmt., Inc.*
13 (2007) 152 Cal. App. 4th 154410
14 *Boeken v. Philip Morris USA, Inc.*
15 (2010) 48 Cal.4th 7885, 6
16 *Californians for Disability Rights v. Mervyn's, LLC*
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18 *Cel-Tech Commc'nns, Inc. v. Los Angeles Cellular Tel. Co.*
19 (1999) 20 Cal. 4th 16310
20 *Chao Fu, Inc. v. Wen Ching Chen*
21 (2012) 206 Cal.App.4th 4811
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23 (2007) 150 Cal.App.4th 4211
24 *Fontenot v. Wells Fargo Bank, N.A.*
25 (2011) 198 Cal.App.4th 2567
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27 (1987) 189 Cal.App.3d 911
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1 OTHER AUTHORITIES

2 Joyce Palomar, 3 Patton & Palomar on Land Titles § 567.50 (3d ed. 2009) 7

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This is yet another foreclosure delay lawsuit filed by a borrower attempting to delay the consequences of his own default through litigation. Repeatedly. Plaintiff Anthony Malfatti (“Plaintiff”) has defaulted on one of his many real property loans. In response to the nonjudicial foreclosure that resulted, Plaintiff has filed a lawsuit against his current lenders, as well as against the loan’s *former* beneficiary, Mortgage Electronic Registration Systems, Inc. (“MERS”). MERS brings the present demurrer in response. As set forth in detail below, neither of the two remaining causes of action Plaintiff attempts to assert against MERS in his operative First Amended Complaint can state a claim as a matter of law. These two attempted claims fail for a host of reasons, beginning with the fact that they are barred by *res judicata*.

II. FACTS AND PROCEDURAL HISTORY

A demurrer is appropriate where “[t]he pleading does not state facts sufficient to constitute a cause of action.” (Cal. Code Civ. Proc., § 430.10(e).) To determine whether a particular cause of action is sufficiently pled, the Court must generally assume the truth of all material facts properly pled in the complaint. (*Von Batsch v. American Dist. Telegraph Co.* (1985) 175 Cal.App.3d 1111, 1117.) The Court must also accept as true all matters subject to judicial notice or incorporated by reference into the complaint. (*Frantz v. Blackwell* (1987) 189 Cal.App.3d 91, 94.) The facts alleged and judicially noticeable matters are these:

20 A. Plaintiff's Loan.

21 The present lawsuit, like the one before it, relates to Plaintiff's interest real property
22 located at 9527 Granada Avenue, Oakland, California 94605 ("the Subject Property"). (See First
23 Amended Complaint ("FAC"), ¶ 1.) In June of 2007 Plaintiff acquired a \$469,000 loan from
24 Countrywide Bank, FSB secured by a deed of trust to the Subject Property. (Request for Judicial
25 Notice in Support of Demurrer to Complaint ("RJN") Exhibit A.) The originally assigned
26 beneficiary of this loan under the deed of trust was MERS. (*Id.*, p. 2.)¹

²⁸ Having taken out a loan secured by this real property, Plaintiff then granted his entire interest in

1 In January of 2013, beneficial interest in the loan secured by the Subject Property was
2 assigned from the original beneficiary, MERS, to HSBC Bank. (RJN, Ex. C.) MERS has no
3 interest in the subject property and is not attempting to assert any such interest.

4 **B. Plaintiff's Previous Lawsuit against Bank of America and MERS.**

5 In response to requests from the loan's servicer, Bank of America, that Plaintiff make
6 required payments on his loan, Plaintiff filed the first of his repeated lawsuits in federal court for
7 the Northern District of California in 2011. (See RJN, Ex. D.) This previous federal suit rested on
8 challenges to MERS' role as assigned beneficiary for his loan, and on allegations that neither
9 MERS, nor his prior loan servicer, Bank of America, had a legal right to collect any payments on
10 the loan. Plaintiff challenged MERS' role as his assigned beneficiary, alleging that "MERS did
11 not loan or otherwise provide anything of value to plaintiff and MERS is not owed anything by
12 plaintiff." (RJN, Ex. D at 2: 19-20; 3: 6-8.)

13 These allegations were dismissed with prejudice. The District Court granted MERS' rule
14 12(b)(6) motion to dismiss for failure to state a claim. (RJN, Ex. E.) In doing so, the district court
15 explicitly rejected Plaintiffs allegations that "the continuing inclusion of [MERS'] name on the
16 deed of trust is a false statement in the county record," and similarly rejected his assertion that
17 MERS' assigned beneficial interest "is clouding title to the property, [and] impairing its market
18 value. (RJN, Ex. E at 3:18 – 4:10.)

19 Following the district court's ruling granting co-defendant Bank of America's motion for
20 summary judgment, it then entered a judgment of dismissal with prejudice in favor of both MERS
21 and Bank of America and against Plaintiff. (RJN, Exs. F and G.)

22 **C. The Present Foreclosure Proceedings Initiated by the Loan's *Current* Beneficiary and
23 Servicer.**

24 Over two years after the Northern District entered judgment in favor of MERS in
25 Plaintiff's previous lawsuit, and nearly three years after MERS assigned its interest in the Subject
26
27 the property to Casa D'Oro Ministries in a grant deed recorded on March 12, 2008 in the Alameda
28 County Recorder's Office. (RJN, Ex. B.) Casa D'Oro Ministries is the owner of the Subject
Property. (*Id.*) Plaintiff himself has no legal interest in this property at all.

1 Property, the loan entered foreclosure. In November of 2015 a Notice of Default was issued to
2 Plaintiff on behalf of the loan's *present* beneficiary, HSBC Bank, and recorded in the Alameda
3 County Recorder's Office. (RJN, Ex. H.) The Notice informed Plaintiff that he was \$123,960.16
4 in default on the loan and advised him of the consequences of a failure to cure his loan deficiency.
5 (*Id.*)

6 Plaintiff failed to cure the loan deficiency and a Notice of Trustee's Sale was issued for the
7 subject property by the loan's current owner and servicer in March of 2016. (RJN, Ex. I.) None
8 of these foreclosure activities were conducted by MERS or on its behalf. (See *Id.*, Exs. H and I.)

9 In response to the initiation of nonjudicial foreclosure proceedings, Plaintiff has chosen to
10 file this latest lawsuit against a host of defendant with various connections to his unpaid loan.
11 Plaintiff attempts to sue these defendants -- including (for some reason) MERS -- on the following
12 allegations:²

13 **D. Plaintiff's Current Lawsuit.**

14 Plaintiff's operative First Amended Complaint ("FAC") is far from a model of clarity. It
15 rambles, repeats itself, contradicts itself, and substitutes length for clarity whenever possible.

16 Insofar as this second operative pleading is directed at MERS, Plaintiff appears to rest
17 those claims on allegations that MERS was not legally able to act as the assigned beneficiary of
18 the loan in question. Recycling the same allegations that the Northern District has dismissed as a
19 matter of law, Plaintiff seeks to conclude that "MERS lacked the authority to assign any interest in
20 Plaintiff's mortgage," and apparently seeks to challenge the foreclosure by his current servicer as a
21 result. (FAC, ¶ 26.) Plaintiff alleges that "[t]he interest in Plaintiff's loan formerly held by MERS
22 and its principal, COUNTRYWIDE BANK, was long extinguished in June 2007," continuing to
23 conclude that "accordingly, MERS had no interest to convey on December 18, 2012 to HSBC."
24 (FAC, ¶ 41.)

25 Alongside these recycled allegations, Plaintiff also attempts to rest his claims on

26 _____
27 ² Plaintiff's original Complaint also sought to name his previous loan servicer, Bank of America,
28 N.A. Plaintiff's operative First Amended Complaint, however, has dropped Bank of America, no
longer naming it as a defendant.

1 allegations that a transfer of beneficial interest occurred in violation of a pooling and servicing
2 agreement which Plaintiff does not supply, and to which he does not allege himself to be a party.
3 Plaintiff seeks to conclude that this untimely assignment of interest in violation of an agreement
4 with no effect on his own rights or obligations relieved him of his obligation to make payments
5 under the terms of his own loan agreement, and now creates a cause of action against every named
6 defendant (including those defendants that are not foreclosing.) (See FAC, ¶¶ 12-22; 26-28.)
7 Plaintiff alleges that “the PSA requires that all rights to, and interest in, both a mortgage note and
8 deed of trust be sold to the trust,” continuing to assert that “therefore, the sale of Plaintiff’s
9 mortgage loan extinguished all right and title to, and interest in, the loan formerly held by original
10 lender COUNTRYWIDE BANK and MERS, and its nominal beneficiary.” (*Id.*, ¶ 18.) Plaintiff
11 seeks to conclude therefore, that “both COUNTRYWIDE and MERS, its nominee, exited the
12 chain of title to Plaintiff’s loan on or before June 29, 2007.” (*Id.*)

13 On these allegations Plaintiff attempts to state two causes of action against MERS; for
14 wrongful foreclosure, and under California Business and Professions Code Section 17200. As
15 described below, both attempted claims fail as a matter of law.

16 III. ARGUMENT

17 A. Plaintiff’s Complaint Is Barred by the Doctrine of *Res Judicata*.

18 The first of many reasons Plaintiff’s claims fail as a matter of law is that they are barred by
19 *res judicata*. The doctrine of *res judicata* encompasses two preclusive doctrines: first, through
20 *claim preclusion* it prohibits a party from re-litigating identical claims that were previously
21 dismissed on their merits. Second, through *issue preclusion* (known as collateral estoppel) the
22 doctrine prohibits claims that are potentially different, yet involve the same issues determined in
23 the previous action. (*Frommhagen v. Board of Supervisors* (1987) 197 Cal.App.3d 1292, 1299.)
24 As the California Court of Appeal has explained, this issue preclusion component of *res judicata*
25 “will apply as to all issues which were involved in the prior case even though some *factual*
26 matters or *legal* arguments which could have been presented in the prior case in support of such
27 issues were not presented.” (*Id.* at 1301 (original emphasis).) Describing those issues that would
28 be precluded from re-litigation, the court emphasized that “where two lawsuits are brought and

1 they arise out of the same alleged factual situation, and although the causes of action or forms of
2 relief may be different, the prior determination of an issue in the first lawsuit becomes conclusive
3 in the subsequent lawsuit between the same parties with respect to that issue and also with respect
4 to every matter which might have been urged to sustain or defeat its determination.” (*Id.*)

5 Under collateral estoppel, a prior decision precludes relitigation of an issue if five
6 requirements are met: “First, the issue sought to be precluded from relitigation must be identical to
7 that decided in a former proceeding. Second, this issue must have been actually litigated in the
8 former proceeding. Third, it must have been necessarily decided in the former proceeding. Fourth,
9 the decision in the former proceeding must be final and on the merits. Finally, the party against
10 whom preclusion is sought must be the same as, or in privity with, the party to the former
11 proceeding.” (*Hardy v. America's Best Home Loans* (2014) 232 Cal.App.4th 795.)

12 As the California courts have emphasized, such preclusion from an earlier judgment on the
13 merits “is based upon the harm suffered, as opposed to the particular theory asserted by the litigant.” (*Boeken v. Philip Morris USA, Inc.* (2010) 48 Cal.4th 788, 798.) Accordingly, California
14 Courts have repeatedly explained that *res judicata* “not only precludes the relitigation of issues
15 that were actually litigated, but also precludes the litigation of issues that could have been litigated
16 in the prior proceeding.” (*Kurtin v. Elieff* (2013) 215 Cal.App.4th 455, 467.) “If the legal
17 principle were otherwise, litigation would end finally only when a party could no longer find
18 counsel whose knowledge and imagination could conceive of different theories of relief based
19 upon the same factual background.” (*Safeco Ins. Co. v. Tholen* (1981) 117 Cal.App.3d 685, 697.)

21 Here, Plaintiff’s latest lawsuit against MERS is barred by the claim preclusion (or
22 collateral estoppel) component of the *res judicata* doctrine. The issues that Plaintiff seeks to
23 challenge – namely, the ability of MERS to act as nominee beneficiary collecting payments on the
24 subject loan – have been actually litigated. (See RJD, Exs. D, E, F, and G.) These issues were
25 decided in the former proceeding with the decision being both final and on the merits. (*Id.*) The
26 party against whom preclusion is sought – Plaintiff – is the same party as that which attempted to
27 assert these claims against MERS in the prior proceedings. Accordingly, the claims that
28 Plaintiff attempts to allege again in this lawsuit are barred by collateral estoppel. Just as he

1 attempted to do in his previous federal complaint, Plaintiff here seeks to challenge the right of
2 MERS to act as nominee beneficiary on his mortgage loan, and seeks to challenge any payments
3 made as a result. These issues have already been litigated and determined on its merits, with final
4 judgment entered. (*Id.*)

5 The fact that Plaintiff's newly hired counsel has elaborated further and additional legal
6 theories in attempting to recycle these claims does not change this result. As noted above, issue
7 preclusion "is based upon the harm suffered, as opposed to the particular theory asserted by the
8 litigant." (*Boeken*, 48 Cal.4th at 798.) The doctrine "not only precludes the relitigation of issues
9 that were actually litigated, but also precludes the litigation of issues that could have been litigated
10 in the prior proceeding." (*Kurtin*, 215 Cal.App.4th at 467.) "If the legal principle were otherwise,
11 litigation would end finally only when a party could no longer find counsel whose knowledge and
12 imagination could conceive of different theories of relief based upon the same factual
13 background." (*Tholen*, 117 Cal.App.3d at 697.)

14 Here, Plaintiff has already sued MERS on allegations that it was not entitled to act as his
15 beneficiary. Those allegations have been finally dismissed and judgment entered against Plaintiff.
16 The claims may not be brought back from the dead.

17 **B. Plaintiff's Present Claims Are Defectively Alleged.**

18 Even in the event Plaintiff's claims were not barred by *res judicata*, these claims would
19 remain subject to dismissal for a host of reasons: First, the claims rest on thoroughly discredited
20 foreclosure delay theories. Second Plaintiff fails to allege facts to support any of his attempted
21 causes of action. Finally, Plaintiff himself has no legal interest in the subject property.

22 **1. Plaintiff's Complaint Rests on Thoroughly Discredited Foreclosure Delay
23 Theories.**

24 Though far from a model of clarity, Plaintiff's most recent complaint appears to rest on
25 allegations that MERS lacked authority to act as his beneficiary, or on allegations that an
26 assignment of interest violated a securitization agreement that Plaintiff does not supply and which
27 he does not allege he was a party to. As California courts have repeatedly and unequivocally
28 explained, these theories fail as a matter of law.

1 First, Plaintiff's challenges to MERS' authority to act as nominee beneficiary fail:
2 California courts have unequivocally rejected such challenges. (See *Fontenot v. Wells Fargo*
3 *Bank, N.A.* (2011) 198 Cal.App.4th 256, 270; *Ghuman v. Wells Fargo Bank, N.A.* (E.D. Cal. 2013)
4 989 F. Supp. 2d 994, 1002.) No California statute or case law prohibits a lender from designating
5 its nominee as beneficiary of the deed of trust securing its loan. California law requires only that a
6 deed of trust be in writing, adequately identify the parties and the property, and be properly signed
7 and delivered. (See Cal. Civ. Code, § 1091.) Indeed, “[c]ourts have accepted MERS as
8 reconciling modern lending practices with traditional real property law” and “recognize the entity
9 serving as nominee or agent as the record holder of the encumbrance.” (Joyce Palomar, 3 Patton
10 & Palomar on Land Titles § 567.50 (3d ed. 2009).)

11 Second, Plaintiff's attempts to argue that a pooling and servicing agreement between the
12 loan's beneficiary and servicer was somehow violated does not relieve him of his obligation to
13 make loan payments or provide a basis on which to challenge the subject foreclosure following his
14 failure to do so. Plaintiff cannot sue under such a pooling and servicing agreement because he
15 does not supply the agreement. If an action is founded on a written contract, “the terms must be
16 set out verbatim in the body of the complaint or a copy of the written instrument must be attached
17 and incorporated by reference.” (*Otword v. Southern P. Transp. Co.* (1985) 166 Cal.App.3d 452,
18 458.) Plaintiff here fails to set forth the terms of this apparently written contract, which he believes
19 was purportedly violated. Accordingly, he cannot state a claim under it.

20 Moreover, the theory that Plaintiff attempts to assert has been fully and unequivocally
21 rejected by California Courts. Even if Plaintiff had provided the purported pooling and servicing
22 agreement he claims to sue under, he would remain unable to sue under this theory because he is
23 not a party to the purported PSA. As the California courts have repeatedly explained: “As an
24 unrelated third party to the alleged securitization, and any other subsequent transfers of the
25 beneficial interest under the promissory note, [borrower] lacks standing to enforce any
26 agreements, including the investment trust's pooling and servicing agreement, relating to such
27 transactions.” (*Jenkins v. JP Morgan Chase Bank, N.A.* (2013) 216 Cal.App.4th 497, 515.) “To
28 the extent Plaintiff relies on violations of the PSA or any other agreements among third parties,

1 Plaintiff's claim fails. As this Court has often explained, plaintiffs who are not parties to PSAs lack
2 standing to challenge that aspect of the securitization process's validity." (*Subramani v. Wells*
3 *Fargo Bank N.A.*, 2013 WL 5913789 (N.D. Cal. Oct. 31, 2013).) Given that Plaintiff was not a
4 party to the purported agreement he attempts to sue under, he cannot sue to enforce its provisions.

5 Previous case authorities had suggested that this theory might be viable under certain
6 limited circumstances. (See *Glaski v. Bank of Am., Nat'l Ass'n* (2013) 218 Cal. App. 4th 1079,
7 1084; *Yanova v. New Century Mortgage Corp.*, 62 Cal. 4th 919, 924 (2016))

8 As a recent published opinion from the California Court of Appeal has confirmed, this line
9 of authority that Plaintiff cites "has been overturned." (*Saterbak v. JPMorgan Chase Bank, N.A.*
10 (2016) 245 Cal.App.4th 808, 815.) In a binding and published decision issued just weeks ago, the
11 California Court of Appeal directly considered and expressly rejected exactly the legal theory that
12 Plaintiff in this case seeks to assert. (*Saterbak*, 245 Cal.App.4th 808.) In *Saterbak*, the trial court
13 sustained the defendant's demurrer the trial court sustained Chase's demurrer on grounds that
14 "Saterbak lacked standing to sue based on alleged noncompliance with the PSA for 2007-AR7
15 trust because she did not allege she was a party to that agreement." (*Id.* at 812.) The Court of
16 Appeal upheld the resulting dismissal, unequivocally affirming that "Saterbak lacks standing to
17 pursue these theories." (*Id.* at 814.) Noting that the New York case law authority that the
18 previous *Glaski* decision relied on "has been overturned," the Court of Appeal expressly declined
19 to follow that line of authority, rejecting the theory that a Plaintiff has standing to challenge the
20 PSA, and upholding dismissal following a sustained demurrer. (*Id.* at 815 n.5.)

21 Even if he had included a copy of the alleged pooling and servicing agreement, Plaintiff
22 would remain unable to challenge the foreclosure following his own default based on such an
23 agreement. As a stranger to that agreement – which had no purported effect at all on his own loan
24 or payment obligations – Plaintiff lacks standing to sue to enforce it. His attempts to challenge
25 nonjudicial foreclosure through such theories necessarily fail as a matter of law.

26 **2. Plaintiff Fails to Allege Facts to Assert His Attempted Claims.**

27 Even if Plaintiff's claims were not barred by *res judicata*, and even if these claims rested
28 on anything other than thoroughly discredited foreclosure delay theories, they would remain

1 defectively pled as a matter of law. As described below, Plaintiff fails to allege facts to support
2 the requisite elements of the two remaining claims he attempts to assert against MERS:

3 **(a) Plaintiff's First Cause of Action Fails to State a Claim for Wrongful
4 Foreclosure.**

5 Plaintiff's First Cause of Action attempts to state a claim against defendants including
6 MERS for wrongful foreclosure – despite the fact that *MERS is not foreclosing* on the subject
7 property. (See FAC, ¶¶ 36-47.) Plaintiff attempts to rest this cause of action on allegations that
8 his current lender should not be initiating foreclosure. Insofar as this is directed at MERS,
9 Plaintiff seeks to assert that “the interest in Plaintiff’s loan formerly held by MERS and its
10 principal COUNTRYWIDE BANK was long extinguished in June 2007” (See *Id.*, ¶ 41.)

11 This attempted claim fails for three reasons:

12 First, Plaintiff fails to state a claim for wrongful foreclosure against MERS because MERS
13 is not foreclosing on the subject property. Nor is MERS even asserting any interest in the
14 property, for which it assigned all beneficial interest years ago. Indeed, those Defendant that *are*
15 in the process of foreclosing have not completed any foreclosure. No trustee’s sale has taken
16 place and no foreclosure has been completed (wrongful or otherwise). Nor does MERS have any
17 interest in or connection to the foreclosure proceedings that have been initiated years after its
18 interest in the subject loan ended.

19 Second, this attempted claim rests entirely on thoroughly discredited foreclosure delay
20 theories, as emphasized above. (See *supra*, III. B.)

21 Third, even if the moving Defendant were the ones foreclosing on the property, and even if a
22 foreclosure sale had in fact occurred, and even if Plaintiff had articulated some legal basis on which to
23 challenge the present foreclosure proceedings, Plaintiff would still need to allege that the alleged
24 defect in the nonjudicial foreclosure process actually affected his rights and obligations concerning
25 the subject property. A plaintiff in a suit for wrongful foreclosure generally must demonstrate the
26 alleged imperfection in the foreclosure process was prejudicial to the plaintiff’s interests. (*Aceves v.*
27 *U.S. Bank* (2011) 192 Cal.App.4th 218, 232.) California courts find a *lack* of prejudice when a
28 borrower is in default and cannot show that the alleged irregularity “interfered with the borrower’s

1 ability to pay or that the original lender would not have foreclosed under the circumstances.” (*Dick v.*
2 *Am. Home Mortgage Servicing, Inc.*, CIV. 2:13-00201 WBS, (E.D. Cal. Sept. 18, 2013) 2013 WL
3 5299180 at *3.) Here, not only is Plaintiff attempting to sue defendant who are not foreclosing based
4 on a foreclosure sale that has not occurred, but he fails to allege any facts to show how any purported
5 irregularity affected his rights or obligations concerning the subject property in any way. This
6 attempted claim fails for this reason as well.

(b) Plaintiff's Fourth Cause of Action Fails to State a Claim under Business and Professions Code Section 17200.

9 Plaintiff's Fourth Cause of Action attempts to state a claim against all named defendant
10 under California Business and Professions Code Section 17200 based on the allegations above.
11 (FAC, ¶¶ 60-67.) This attempted claim fails as a matter of law for two fundamental reasons:

12 First, Plaintiff lacks standing to assert this claim, having failed to identify any lost money or
13 property resulting from Bank of America or MERS' allegedly illegal conduct. A claimant under
14 this statute may sue "who has suffered injury in fact and has lost money or property as a result of
15 [the] unfair competition" alleged in the complaint. (Cal. Bus. & Prof. Code, § 17204; *Californians*
16 *for Disability Rights v. Mervyn's, LLC* (2006) 39 Cal. 4th 223, 227.) Here, Plaintiff alleges no lost
17 money or property resulting from any illegal conduct by MERS.

18 Second, and relatedly, this purported cause of action fails as a matter of law because
19 Plaintiff fails to articulate any legal basis on which to rest such a cause of action. Section 17200
20 prohibits “any unlawful, unfair or fraudulent business act or practice.” (Cal. Bus. & Prof. Code,
21 § 17200; *Berryman v. Merit Prop. Mgmt., Inc.* (2007) 152 Cal. App. 4th 1544.) Section 17200
22 claims “borrow” violations of other laws. (*Cel-Tech Commc’ns, Inc. v. Los Angeles Cellular Tel.*
23 *Co.* (1999) 20 Cal. 4th 163, 180..) “Where a plaintiff cannot state a claim under the ‘borrowed’
24 law, she cannot state a UCL claim either.” (*Rosal v. First Fed. Bank of Cal.* (N.D. Cal. 2009) 671
25 F. Supp. 2d 1111, 1126.) Here, Plaintiff fails to identify any acts by Defendant Bank of America
26 or MERS that would amount to violations of other laws. Accordingly, his Section 17200 claim
27 cannot state any cause of action based on these separate allegations and fails as a matter of law.

1 **3. Plaintiff Has No Legal Interest in the Subject Property.**

2 Finally, even in the event Plaintiff's two remaining claims against MERS did not fail for
3 each of the reasons above (and they do), these attempted claims would fail for the reason that
4 Plaintiff himself lacks any legal interest in the subject property. "It is well settled that only parties
5 with a real interest in a dispute have standing to seek its adjudication." (Cal. Code Civ. Proc. §
6 367; *Killian v. Millard* (1991) 228 Cal.App.3d 1601, 1605.) To be a real party in interest, a
7 claimant must possess "an actual and substantial interest in the subject matter of the action," and
8 further must "stand[] to be benefited or injured by a judgment in the action." (*Fladeboe v. Am.
9 Isuzu Motors, Inc.* (2007) 150 Cal.App.4th 42, 54.) Accordingly, a litigant bringing an action to
10 challenge a proceeding on real property must have a legal interest in that property. (*Chao Fu, Inc.
11 v. Wen Ching Chen* (2012) 206 Cal.App.4th 48, 58-59.) As the California Court of Appeal
12 recently emphasized, "[o]ne without any title or interest in the property cannot maintain such an
13 action." (*Id.* at 58.)

14 Here, Plaintiff has transferred his entire legal interest in the subject property to "Casa
15 D'Oro Ministries in a grant deed recorded on March 12, 2008 in the Alameda County Recorder's
16 Office. (RJN, Ex. B.) Casa D'Oro Ministries is the owner of the Subject Property. (*Id.*) Plaintiff
17 himself has no legal interest in this property at all. Even if his two remaining claims did not fail
18 against MERS for every one of the reasons articulated above (and they do), he would still lack
19 standing to assert such claims regarding the subject property. For this reason also, his two
20 asserted claims against MERS should be dismissed with prejudice.

21 **IV. CONCLUSION**

22 Where the nature of a plaintiff's claim is clear, but under substantive law no liability exists,
23 leave to amend should be denied, for no amendment could change the result." (*Tyco Indus. v.
24 Superior Court* (1985) 164 Cal.App.3d 148, 153.) It is the plaintiff's burden to show that such
25 amendment could cure the complaint's defects. (*Goodman v. Kennedy* (1976) 18 Cal.3d 335,
26 349.) Here, Plaintiff's FAC itself plainly demonstrates that this action was not brought as a good-
27 faith attempt to state facts to support a valid cause of action any of the named defendants
28 (including MERS), but rather constitutes an attempt to delay the consequences of a valid

1 nonjudicial foreclosure through litigation. Further, Plaintiff has failed to remedy the fatal and
2 fundamental defects that have plagued his attempted pleadings in filing the present amended
3 complaint. Plaintiff's failure to state a cause of action, coupled with his failure to amend his
4 claims in response to the demurrer to his original complaint, confirms his inability to remedy these
5 claims through further amended pleadings. Accordingly, MERS requests that this Court sustain
6 their present demurrer in its entirety and without further leave to amend, dismissing this action
7 with prejudice.

8 DATED: July 15, 2016

SEVERSON & WERSON
A Professional Corporation

10 By:



11 Jason M. Richardson

12 Attorneys for Defendant MORTGAGE ELECTRONIC
13 REGISTRATION SYSTEMS, INC.

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FILED
ALAMEDA COUNTY

JUL 15 2016

CLERK OF THE SUPERIOR COURT
By *Cheryl Clark* Deputy

1 MARK JOSEPH KENNEY (State Bar No. 87345)
mjk@severson.com
2 JASON M. RICHARDSON (State Bar No. 250916)
jmr@severson.com
3 SEVERSON & WERSON
A Professional Corporation
4 One Embarcadero Center, Suite 2600
San Francisco, California 94111
5 Telephone: (415) 398-3344
Facsimile: (415) 956-0439

6 Attorneys for Defendant
7 MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS
8

9 SUPERIOR COURT OF CALIFORNIA

10 COUNTY OF ALAMEDA

11
12 ANTHONY A. MALFATTI,

13 Plaintiff,

14 vs.

15 MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.;
16 SPECIALIZED LOAN SERVICING, LLC;
THE MORTGAGE LAW FIRM, PLC; and
17 HSBC BANK USA, NATIONAL
ASSOCIATION, AS TRUSTEE FOR
18 DEUTSCHE ALT-A SECURITIES, INC.,
MORTGAGE LOAN TRUST, MORTGAGE
19 PASS-THROUGH CERTIFICATES, SERIES
2007-OA4; and DOES 1-10, inclusive,

20 Defendants.

Case No. RG16808857

**DECLARATION OF JASON M.
RICHARDSON PURSUANT TO
CALIFORNIA CODE OF CIVIL
PROCEDURE SECTION 430.41**

Accompanying Documents: (1) Notice of Demurrer, Demurrer, Memorandum of Points and Authorities; (2) Request for Judicial Notice served concurrently.

Date: 08/24/2016
Time: 3:00 PM
Dept.: 18
Reservation No. R 1759942

Action Filed: December 18, 2015
Trial Date: N/A

22
23 I, Jason M. Richardson, declare as follows:

24 1. I am an attorney at law duly licensed to practice before this Court and am an
25 associate with the law firm of Severson & Werson, A Professional Corporation, counsel for
26 Defendant Mortgage Electronic Registration Systems, Inc. ("MERS") in this matter. I am making
27 this declaration in pursuant to California Code of Civil Procedure Section 430.41 in support of
28 MERS' demurrer to Plaintiff's First Amended Complaint. I am familiar with the facts and
70000.2685/8097586.1

DECLARATION OF JASON M. RICHARDSON PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE
SECTION 430.41

1 circumstances set forth herein.

2 2. On July 8, 2016 at 11:02 a.m. I attempted to contact Plaintiff's counsel in this case,
3 Mark Lapham, calling (925) 837-9007 in an attempt to reach Mr. Lapham. Mr. Lapham did not
4 answer the phone and I left a message requesting that he return my call in order to discuss
5 Defendant MERS' demurrer to plaintiff's complaint as per Code of Civil Procedure Section
6 430.41. To date Mr. Lapham has not returned my call.

I declare under penalty of perjury that the foregoing is true and correct. Executed this
15th day of July, 2016.

Jason M. Richardson

FILED
ALAMEDA COUNTY

JUL 15 2016

CLERK OF THE SUPERIOR COURT
By Charge Clerk
Deputy

1 MARK JOSEPH KENNEY (State Bar No. 87345)
mjk@severson.com
2 JASON M. RICHARDSON (State Bar No. 250916)
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6 Attorneys for Defendant
7 MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS
8

9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF ALAMEDA
11

12 ANTHONY A. MALFATTI,

Case No. RG16808857

13 Plaintiff,

PROOF OF SERVICE

14 vs.

Action Filed: March 23, 2016
Trial Date: N/A

15 MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.;
16 SPECIALIZED LOAN SERVICING, LLC;
THE MORTGAGE LAW FIRM, PLC; and
17 HSBC BANK USA, NATIONAL
ASSOCIATION, AS TRUSTEE FOR
18 DEUTSCHE ALT-A SECURITIES, INC.,
MORTGAGE LOAN TRUST, MORTGAGE
19 PASS-THROUGH CERTIFICATES, SERIES
2007-OA4; and DOES 1-10, inclusive,
20

Defendants.
21

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PROOF OF SERVICE

ROOF OF SERVICE
Anthony Malfatti v. Bank of America, N.A., et al.
Alameda County Superior Court Case No RG16808857

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of San Francisco, State of California. My business address is One Embarcadero Center, Suite 2600, San Francisco, CA 94111.

On July 15, 2016, I served true copies of the following document(s):

**DEFENDANT MORTGAGE ELECTRONIC REGISTRATION SYSTEMS,
INC.'S NOTICE OF DEMURRER AND DEMURRER TO PLAINTIFF'S
FIRST AMENDED COMPLAINT; MEMORANDUM OF POINTS AND
AUTHORITIES; REQUEST FOR JUDICIAL NOTICE AND
DECLARATION OF JASON M. RICHARDSON**

on the interested parties in this action as follows:

Law Offices of Mark W. Lapham
751 Diablo Road
Danville, CA 94526
marklapham@sbcglobal.net

Attorney for Plaintiff Anthony A. Malfatti

Tele: (925) 837-9007

Jarrett S. Osborne-Revis
LECLAIRRYAN LLP
400 Capitol Mall, Suite 1500
Sacramento, California 95814

Attorneys for Defendants Mortgage Electronic Registration System, Inc.; Specialized Loan Servicing LLC; and HSBC Bank USA, National Association, as Trustee for Deutsche Alt-A Securities, Inc., Mortgage Loan Trust Pass Through Certificates, Series 2007-OA4

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Severson & Werson's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 15, 2016, at San Francisco, California.

Claudia O. Perez

FILED
ALAMEDA COUNTY

JUL 16 2016

CLERK OF THE SUPERIOR COURT
By Cherie Clark
Deputy

1 MARK JOSEPH KENNEY (State Bar No. 87345)
mjk@severson.com
2 JASON M. RICHARDSON (State Bar No. 250916)
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Facsimile: (415) 956-0439
6
7 Attorneys for Defendant
MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC.
8

9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF ALAMEDA
11

12 ANTHONY A. MALFATTI,

13 Plaintiff,

14 vs.

15 MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.;
16 SPECIALIZED LOAN SERVICING, LLC;
THE MORTGAGE LAW FIRM, PLC; and
17 HSBC BANK USA, NATIONAL
ASSOCIATION, AS TRUSTEE FOR
18 DEUTSCHE ALT-A SECURITIES, INC.,
MORTGAGE LOAN TRUST, MORTGAGE
19 PASS-THROUGH CERTIFICATES, SERIES
2007-OA4; and DOES 1-10, inclusive,
20
21 Defendants.

Case No. RG16808857

**DEFENDANT MORTGAGE
ELECTRONIC REGISTRATION
SYSTEMS, INC.'S REQUEST FOR
JUDICIAL NOTICE IN SUPPORT OF
DEMURRER TO PLAINTIFF'S FIRST
AMENDED COMPLAINT**

Accompanying Documents: (1) Notice of Demurrer, Demurrer, Memorandum of Points and Authorities; and (2) Declaration of Jason M. Richardson served concurrently.

Date: 08/24/2016
Time: 3:00 PM
Dept.: 18
Reservation No. R 1759942

Action Filed: March 23, 2016
Trial Date: N/A

1 Pursuant to California Code of Civil Procedure Sections 430.30 and 430.70, and California
2 Evidence Code Sections 452, and 453, Defendant MORTGAGE ELECTRONIC
3 REGISTRATION SYSTEMS, INC. respectfully requests that this Court take judicial notice of
4 the following documents in support of its demurrer to Plaintiff's First Amended Complaint:

5 **Exhibit A:**

6 A true and correct copy of the June 5, 2007 Recorded Deed of Trust, which secured a
7 loan in the amount of \$469,000 obtained by Plaintiff Anthony Malfatti from Contrywide
8 Bank, FSB on real property located at 9527 Granada Avenue, Oakland California 94605, and
9 which was recorded on December 20, 2007 in the Official Records of the Alameda County
10 Recorder's Office as Document No. 2007426322.

11 **Exhibit B:**

12 A true and correct copy of the grant deed recorded on March 12, 2008 in the official
13 records of the Alameda County Recorder's Office as Document No. 2008089441

14 **Exhibit C:**

15 A true and correct copy of the Assignment of Deed of Trust recorded in the Records of
16 the Alameda County Recorder's Office on January 9, 2013 as Document No. 2013010603.

17 **Exhibit D:**

18 A true and correct copy of the Complaint filed by Anthony Malfatti against defendants
19 Mortgage Electronic Registration Systems, Inc. and BAC Home Loans Servicing in the United
20 States District Court for the Northern District of California on or about June 24, 2011 in case
21 number C11-03142.

22 **Exhibit E:**

23 A true and correct copy of the November 29, 2011 Order granting in part and denying
24 in part Defendants' Motion to Dismiss Plaintiff's Complaint in United States District Court for
25 the Northern District of California on or about June 24, 2011 in case number C11-03142.

26 **Exhibit F:**

27 A true and correct copy of the June 20, 2013 Order granting Defendant Bank of

1 America's Motion for Summary Judgment in United States District Court for the Northern
2 District of California on or about June 24, 2011 in case number C11-03142.

Exhibit G:

4 A true and correct copy of the judgment of dismissal entered on June 20, 2013 in
5 United States District Court for the Northern District of California on or about June 24, 2011
6 in case number C11-03142.

Exhibit H:

8 A true and correct copy of November 12, 2015 Notice of Default and Election to Sell
9 Under Deed of Trust issued to Plaintiff Anthony Malfatti by the Mortgage Law Firm, and
10 accompanying Notice of Default Declaration issued by Ami McKernan on November 2, 2015,
11 which were recorded on November 17, 2015 in the Official Records of the Alameda County
12 Recorder's Office as Document No. 2015307077.

Exhibit I:

14 A true and correct copy of the Notice of Trustee's Sale pertaining to the property
15 located at 9527 Granada Avenue, Oakland California 94605 issued to Plaintiff Anthony
16 Malfatti by the Mortgage Law Firm on March 24, 2016, and recorded on April 1, 2016 in the
17 official records of the Alameda County Recorder's Office as Document No. 2016078183.

19 | DATED: July 15, 2016

SEVERSON & WERSON
A Professional Corporation

By:



Jason M. Richardson

Attorneys for DEFENDANT MORTGAGE
ELECTRONIC REGISTRATION SYSTEMS, INC.

Exhibit A

Alliance Title
11547698-002

Recording Requested By:
D. DE TAR

RECORDING REQUESTED BY:
ALLIANCE TITLE COMPANY

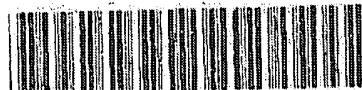
After Recording Return To:
COUNTRYWIDE HOME LOANS, INC.

MS SV-79 DOCUMENT PROCESSING
P.O. Box 10423
Van Nuys, CA 91410-0423

Prepared By:
JENNIE TREVINO



2007426322 12/20/2007 08:30 AM
OFFICIAL RECORDS OF ALAMEDA COUNTY
PATRICK O'CONNELL
RECORDING FEE 78.00



23 PCS

[Space Above This Line For Recording Data]

11547698-002 00016973812606007
(Bacrow/Closing #) [Doc ID #]

DEED OF TRUST

MIN 1001337-0002059993-5

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

- (A) "Security Instrument" means this document, which is dated JUNE 05, 2007, together with all Riders to this document.
(B) "Borrower" is
ANTHONY A MALFATTI, AN UNMARRIED MAN

CALIFORNIA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS

Page 1 of 16

VMP[®] -6A(CA) (0207) CHL (08/05)(d) VMP Mortgage Solutions, Inc. (800)521-7291
CONV/VA

Form 3005 1/01



* 2 3 0 0 1 *



* 1 6 9 7 3 8 1 2 0 0 0 0 0 1 0 0 6 A *

Borrower's address is
9527 GRANADA AVENUE, OAKLAND, CA 94605

Borrower is the trustor under this Security Instrument.

(C) "Lender" is
Countrywide Bank, FSB.

Lender is a FED SVGS BANK
organized and existing under the laws of THE UNITED STATES

Lender's address is
1199 North Fairfax St. Ste.500, Alexandria, VA 22314

(D) "Trustee" is
RECONTRUST COMPANY, N.A.
225 W HILLCREST DRIVE, MSN: TO-02, THOUSAND OAKS, CA 91360

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(F) "Note" means the promissory note signed by Borrower and dated JUNE 05, 2007. The Note states that Borrower owes Lender
FOUR HUNDRED SIXTY NINE THOUSAND and 00/100

Dollars (U.S. \$ 469,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than JULY 01, 2037

(G) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(H) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(I) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

- | | | |
|-----------------------------------------------------------|---------------------------------------------------------|---------------------------------------------|
| <input checked="" type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Condominium Rider | <input type="checkbox"/> Second Home Rider |
| <input type="checkbox"/> Balloon Rider | <input type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> I-4 Family Rider |
| <input type="checkbox"/> VA Rider | <input type="checkbox"/> Biweekly Payment Rider | <input type="checkbox"/> Other(s) [specify] |

(J) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(K) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(L) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(M) "Escrow Items" means those items that are described in Section 3.

(N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii)

DOC ID #: 00016973812606007

conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(O) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(P) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(R) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the

COUNTY of ALAMEDA :

[Type of Recording Jurisdiction]

[Name of Recording Jurisdiction]

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

Parcel ID Number: 123456

which currently has the address of

9527 GRANADA AVENUE, OAKLAND

[Street/City]

California 94605 ("Property Address"):

[Zip Code]

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right to exercise any or all of those interests, including,

but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee and Borrower further agrees to generally assign rights to insurance proceeds to the holder of the Note up to the amount of the outstanding loan balance. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of

paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee and Borrower further agrees to generally assign rights to insurance proceeds to the holder of the Note up to the amount of the outstanding loan balance.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower

shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security

Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. Borrower's Copy. Borrower shall be given one copy of the Note and of this Security Instrument.

18. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Sale of Note; Change of Loan Servicer; Notice of Change. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in

compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute a written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold. Trustee shall cause this notice to be recorded in each county in which any part of the Property is located. Lender or Trustee shall mail copies of the notice as prescribed by Applicable Law to Borrower and to the other persons prescribed by Applicable Law. Trustee shall give public notice of sale to the persons and in the manner prescribed by Applicable Law. After the time required by Applicable Law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

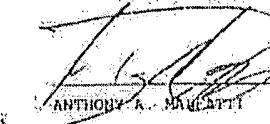
23. Reconveyance. Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Lender may charge such person or persons a reasonable fee for reconveying the Property, but only if the fee is paid to a third party (such as the Trustee) for services rendered and the charging of the fee is permitted under Applicable Law. If the fee charged does not exceed the fee set by Applicable Law, the fee is conclusively presumed to be reasonable.

24. Substitute Trustee. Lender, at its option, may from time to time appoint a successor trustee to any Trustee appointed hereunder by an instrument executed and acknowledged by Lender and recorded in the office of the Recorder of the county in which the Property is located. The instrument shall contain the name of the original Lender, Trustee and Borrower, the book and page where this Security Instrument is recorded and the name and address of the successor trustee. Without conveyance of the Property, the successor trustee shall succeed to all the title, powers and duties conferred upon the Trustee herein and by Applicable Law. This procedure for substitution of trustee shall govern to the exclusion of all other provisions for substitution.

25. Statement of Obligation Fee. Lender may collect a fee not to exceed the maximum amount permitted by Applicable Law for furnishing the statement of obligation as provided by Section 2943 of the Civil Code of California.

DOC ID #: 00016973812606007

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this
Security Instrument and in any Rider executed by Borrower and recorded with it.



ANTHONY A. MANCINI _____
(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

State of California
County of San Francisco

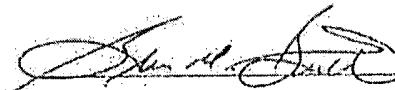
} ss.

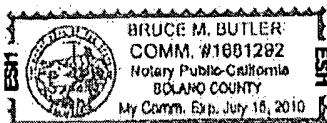
On July 6, 2007 before me, Bruce M. Butler, Notary Public
personally appeared

ANTHONY A. MALIBATTI

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) are subscribed to the within instrument and acknowledged to me that (s)he/they executed the same in (s)his/her/their authorized capacity(ies), and that by (s)his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

 (Seal)



11547698 -002 -CJ

**Exhibit A
Legal Description**

All that certain real property situate in the City of Oakland, County of Alameda, State of California,
described as follows:

Lot 254, Oak Knoll, filed June 25th, 1966, Map Book 10, Page 80, Alameda County Records.

**PAYMENT ADVANTAGE
FIXED/ADJUSTABLE RATE RIDER
(LIBOR One Year Index - Rate Caps)**

11547698-002 00016973812606007
[Escrow/Closing #] [Doc ID #]

THIS FIXED/ADJUSTABLE RATE RIDER is made this FIFTH day of JUNE, 2007, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Payment Advantage Fixed/Adjustable Rate Note (the "Note") to Countrywide Bank, FSB.

("Lender") of the same date and covering the property described in the Security Instrument and located at:

9527 GRANADA AVENUE
OAKLAND, CA 94605
[Property Address]

THE NOTE CONTAINS PROVISIONS THAT WILL CHANGE THE FIXED INTEREST RATE TO AN ADJUSTABLE INTEREST RATE. THE NOTE LIMITS THE AMOUNT THE ADJUSTABLE INTEREST RATE CAN CHANGE AT ANY ONE TIME. FOR A LIMITED TIME THERE WILL BE A PAYMENT OPTION THAT IS LESS THAN THE FULL AMOUNT OF INTEREST DUE. IF THIS PAYMENT OPTION IS CHOSEN, THE PRINCIPAL AMOUNT TO REPAY COULD BE GREATER THAN THE AMOUNT ORIGINALLY BORROWED.

THE NOTE CONTAINS A PREPAYMENT PENALTY.

ADDITIONAL COVENANTS: In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. INTEREST AND PAYMENTS

The Note provides for changes in the interest rate and the monthly payments, as follows:

• Payment Advantage Fixed/Adjustable Rate One Year LIBOR Rider
1E680-XX (12/06)(JL)
Page 1 of 6



2 3 9 9 1 1



1 6 9 7 3 8 1 2 8 0 0 0 0 0 1 E 6 8 0

2. INTEREST

(A) Fixed Interest Rate

Interest will be charged on unpaid Principal until the full amount has been paid. Interest will initially accrue at a yearly rate of **6.750 %**. This is my initial fixed interest rate and is the rate for determining the interest I owe until it changes as provided below. Interest will be charged on the basis of a twelve-month year and a thirty-day month.

(B) Adjustable Interest Rate

The initial fixed interest rate I owe will change to an adjustable interest rate on the first day of JULY, 2012 and the adjustable interest rate will change on that day every 12th month thereafter. The date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change is called an "Interest Rate Change Date." The new rate of interest will become effective on each interest rate change date.

(C) Index

Beginning with the first interest rate change date, my adjustable interest rate will be based on an index. The "index" is the average of interbank offered rates for one year U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in *The Wall Street Journal*. The most recent index figure available as of the date 45 days before each interest rate change date is called the "Current Index."

If the index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

(D) Calculation of Adjustable Interest Rate Changes

Before each interest rate change date, the Note Holder will calculate my new adjustable interest rate by adding **2.250 %** (this amount is the "Margin") to the current index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). This rounded amount will be my new adjustable interest rate until the next interest rate change date. My adjustable interest rate will never be greater than **11.750 %** or lower than the margin.

(E) Limits on Interest Rate Changes

The interest rate in effect at the first interest rate change date will not be greater than **11.750 %** or less than **2.250 %**. Thereafter, my adjustable interest rate will never be increased or decreased on any single interest rate change date by more than 2 percentage points from the rate of interest in effect for the preceding 12 months.

3. PAYMENTS

(A) Time and Place of Payments

I will make a payment every month.

I will make my monthly payments on the **FIRST** day of each month beginning on **AUGUST 01, 2007**, I will make these payments every month until I have paid all the Principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If I still owe amounts under this Note on **JULY 01, 2037**, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at
P.O. Box 10219, Van Nuys, CA 91410-0219
or at a different place if required by the Note Holder.

(B) Minimum Payment

The "Minimum Payment" is the minimum amount Note Holder will accept for my monthly payment. The Minimum Payment is calculated three (3) different ways during the loan term:

(i) Until **JULY 01, 2017** ("Recast Date") or until the Maximum Negative Amortization Cap is reached, whichever is earlier, the Minimum Payment will be calculated using the then-current interest rate (either fixed or adjustable as described in Section 2) minus 5.000 percentage points. The result of this calculation is called the "Minimum Payment Rate." The Minimum Payment Rate can never be lower than 1%. Since the Minimum Payment Rate is less than the interest rate applied to my unpaid Principal balance, the Minimum Payment will be insufficient to pay the interest portion of the monthly payment and no portion is applied to Principal. When I make a Minimum Payment, which is based on the Minimum Payment Rate that is less than the rate of interest due, the unpaid interest is added to the Principal amount. This is known as "deferred interest" or "negative amortization."

(ii) If the unpaid Principal balance reaches the Maximum Negative Amortization Cap prior to the Recast Date, my new Minimum Payment will be the amount that would pay only the interest portion of the monthly payment based upon the then-current interest rate, which changes in accordance with Section 2. This is the Minimum Payment in effect until the Recast Date.

(iii) After the Recast Date and for the remainder of the loan term, the Minimum Payment will be the monthly payment amount necessary to pay the loan off, in full, at the Maturity Date in substantially equal payments based on the then-current interest rate, which changes in accordance with Section 2.

(C) Initial Monthly Minimum Payment

Each of my initial monthly Minimum Payments until the first Interest Rate Change Date will be in the amount of U.S. \$ 1,675.47

(D) Monthly Payment Changes

Changes in my monthly payment will be the result of changes in the unpaid Principal balance of my loan and in the interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in accordance with Sections 2 and 3 of this Note.

(E) Additions to My Unpaid Principal

For each month that my monthly payment is less than the interest portion, the Note Holder will subtract the amount of my monthly payment from the amount of the interest due and will add the difference to my unpaid principal. Interest will accrue on the amount of this difference at the interest rate required by Section 2. For each month that the monthly payment is greater than the interest due, the Note Holder will apply the payment as provided in Section 3(A).

(F) Payment Options

Until the Recast Date, the Note Holder may provide me with up to three (3) additional monthly payment options ("Payment Options") if they are greater than the Minimum Payment. The Payment Options are calculated using the interest rate in accordance with Section 2. The following Payment Options may be provided:

(i) **Interest Only Payment:** the amount that would pay only the interest portion of the monthly payment. The Principal balance will not be decreased by this Payment Option and it is only available if the interest portion exceeds the Minimum Payment.

(ii) **Amortized Payment:** the amount necessary to pay the loan off (Principal and Interest) at the Maturity Date in substantially equal payments based on the then-current interest rate.

(iii) **15 Year Amortized Payment:** the amount necessary to pay the loan off (Principal and Interest) within a fifteen (15) year term from the first payment due date in substantially equal payments at the then-current interest rate.

These Payment Options are only available if they are greater than the Minimum Payment. If the Maximum Negative Amortization Cap is reached, then the Payment Options available will be the Amortized Payment and the 15 Year Amortized Payment. Upon the Recast Date I will no longer have Payment Options and I will be required to pay the Amortized Payment, which becomes the Minimum Payment as described in Section 3(B)(iii).

B. TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER

Section 18 of the Security Instrument entitled "Transfer of the Property or a Beneficial Interest in Borrower" is amended to read as follows:

(A) Until my initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section 2 above, Paragraph 18 of the Security Instrument shall read as follows:

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by

this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

(B) When my initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section 2 above, Paragraph 18 of the Security Instrument described in Section 12(A) above shall then cease to be in effect, and Paragraph 18 of the Security Instrument shall instead read as follows:

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender. To the extent permitted by Applicable Law, Lender may charge reasonable fees as a condition to Lender's consent to the loan assumption. Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this

DOC ID #: 00016973812606007

Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Payment Advantage Fixed/Adjustable Rate Rider.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.



ANTHONY A. MALFATTI -Borrower

-Borrower

-Borrower

-Borrower

Exhibit B

RECORDING REQUESTED BY:

AND

When Recorded Mail Document
and Tax Statement To:
Casa D'Oro Ministries
9527 Granada Ave
Oakland, CA 94605



2008089441 03/12/2008 11:09 AM
OFFICIAL RECORDS OF ALAMEDA COUNTY
PATRICK O'CONNELL
RECORDING FEE: 11.00



2 PGS
PCOR 20.00

APN: 043a-4687-002

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Grant Deed-TITLE into Trust/Grantor & Grantee Same

The undersigned grantor(s) declare(s)

Documentary transfer tax is \$ 0

City Transfer Tax is \$ 0 "Not Pursuant to Sale"

- [] computed on full value of property conveyed, or R&T code 11930 - GIPT
[] computed on full value less value of items or encumbrances remaining at time of sale,
[] Unincorporated Area City of Oakland,

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, Anthony A. Malfatti, an unmarried man as Trustee of Declaration of Trust of Casa D'Oro Ministries

hereby GRANT(S) to Casa D'Oro Ministries

the following described real property in the City of Oakland, County of Alameda, State of California:
SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

DATED: March 11, 2008

State of California
County of ALAMEDA

Anthony A. Malfatti
Trustee, Casa D'Oro Ministries

On MARCH 11, 2008 before me,
CARLOS GUTIERREZ, Notary Public
(here insert name and title of the officer), personally appeared
Anthony A. Malfatti,

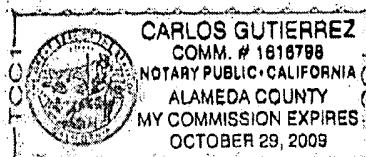
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal:

Signature:

(Seal)



MAIL TAX STATEMENTS AS DIRECTED ABOVE
GRANT DEED

EXHIBIT "A"

All that certain real property situated in the city of Oakland, county of Alameda, state of California, described as follows:

Lot 254, Oak Knoll, filed June 25th, 1966, Map book 10, Page 80, Alameda County Records

APN: 043a-4687-002

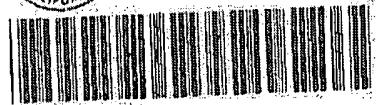
Exhibit C

Recording Requested by:
M. E. Wileman

PLEASE FORWARD RECORDED
DOCUMENT TO:
M. E. Wileman
2860 Exchange Blvd. # 100
Southlake, TX 76092



2013010603 01/09/2013 12:03 PM
OFFICIAL RECORDS OF ALAMEDA COUNTY
PATRICK O'CONNELL
RECORDING FEE: 18.00



1 PG

JW
Assignment of Deed of Trust Send Any Notices To Assignee.

For Valuable Consideration, the undersigned, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS") AS NOMINEE FOR COUNTRYWIDE BANK, FSB, ITS SUCCESSORS AND ASSIGNS P.O. Box 2026, Flint, MI 48501-2026 (Assignor) by these presents does assign and set over, without recourse, to HSBC BANK USA, NATIONAL ASSOCIATION, AS TRUSTEE FOR THE HOLDERS OF THE DEUTSCHE ALT-A SECURITIES, INC. MORTGAGE LOAN TRUST, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2007-OA4 c/o Specialized Loan Servicing, 8742 Lucent Blvd., Suite 300, Highlands Ranch, CO 80129 (Assignee) the described deed of trust with all interest, all liens, any rights due or to become due thereon, executed by ANTHONY A MALFATTI, AN UNMARRIED MAN to MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ('MERS') AS NOMINEE FOR COUNTRYWIDE BANK, FSB, ITS SUCCESSORS AND ASSIGNS. Trustee: RECONTRUST COMPANY, N.A Said deed of trust Dated: 6/5/2007 is recorded in the State of CA, County of Alameda on 12/20/2007, Document # 2007426322 AMOUNT: \$ 469,000.00 Property Address: 9527 GRANADA AVENUE, OAKLAND, CA 94605

IN WITNESS WHEREOF, the undersigned corporation/trust has caused this instrument to be executed as a sealed instrument by its proper officer. Executed on: December 18, 2012
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS") AS NOMINEE FOR COUNTRYWIDE BANK, FSB, ITS SUCCESSORS AND ASSIGNS

By:

Robin Mathews, Assistant Secretary

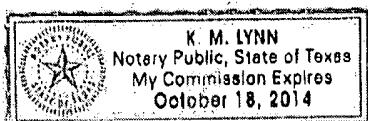


MALFATTI TKP2 *12076358*

State of Texas, County of Tarrant

Before me, K. M. Lynn, Notary Public, personally appeared, Robin Mathews, Assistant Secretary known to me to be the person(s) whose name(s) is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office on 12/18/2012.



Notary public, K. M. Lynn
My commission expires: October 18, 2014

MN 100133700020599935 MERS Phone 888-679-6377

CA Alameda

SLS/ASMT/DBALT#5165

Exhibit D

1 Anthony Maifatti
2 4100 Redwood Road #10-391
3 Oakland, CA 94619
(510) 305-8318

4 Plaintiff In Pro Per

5

6

7 UNITED STATES DISTRICT COURT

8 NORTHERN DISTRICT OF CALIFORNIA — OAKLAND DIVISION

9 Anthony Malfatti,

10 Plaintiff,

11 vs.

12 Mortgage Electronic Registrations
13 Systems, Inc.; and BAC Home Loans
14 Servicing, LP,

15 Defendants.

16 CASE NO. C11-03142

17 COMPLAINT FOR CANCELLATION
18 OF INSTRUMENTS, AND FOR
19 DAMAGES

20 JURISDICTION

21 1. This Court has jurisdiction over this matter under 28 U.S.C. §1332 since
22 plaintiff is a resident of California and no defendant was either incorporated in, or has its
23 principal place of business in, this state.

24 VENUE

25 2. All acts described in this complaint occurred within Alameda County and
26 Contra Costa County, and they relate to security interests in property within these
27 counties. Therefore venue is proper in this Court.

28 INTRA-DISTRICT ASSIGNMENT

29 3. Since both the plaintiff, and the properties and related issues to which this
30 action relates are closest to the Oakland division, assignment of the case to that division is

1 appropriate in accordance with Local Rule 3-2(c).

PARTIES

4. Plaintiff is a natural person domiciled in Oakland, California.

4 5. Defendant Mortgage Electronic Registrations Systems, Inc is a Delaware
5 corporation with its principal place of business outside California. It is registered with
6 the California Secretary of State and has a registered agent in California.

7 6. Defendant BAC Home Loans Servicing, LP (f/k/a Countrywide Bank, FSB)
8 is a Texas Limited partnership with its principal place of business in Plano, Texas. It is
9 not registered with the California Secretary of State to conduct business in California, and
10 has no local registered agent.

FIRST CAUSE OF ACTION

(Cancellation of Instrument #1)

13 7. On June 5, 2007 plaintiff signed a deed of trust regarding property located
14 at 9527 Granada Ave., Oakland, California ('Granada property'), which named defendant
15 MERS as a 'nominee' and 'nominee beneficiary' for Countrywide Bank, FSB, the lender
16 of a mortgage loan plaintiff took out. The deed of trust also stated MERS would also act
17 in the above same 'nominee' capacity for any assigns and successors of the lender. A true
18 and correct copy of the relevant pages of the deed of trust are attached as Exhibit A.

19 8. In doing the above, MERS did not loan or otherwise provide anything of
20 value to plaintiff, and MERS is not owed anything by plaintiff.

9. Defendant MERS is an organization which purports to act solely and exclusively as a 'nominee' for lenders, and successors/assigns of lenders, who are members of MERS.

24 10. MERS is not, and never has been, a 'creditor' of plaintiff, as that term is
25 defined in the federal Truth In Lending Act (TILA).

26 11. Shortly after plaintiff took out the above mortgage loan, Countrywide Bank,
27 FSB transferred/assigned it to another party, and subsequent transfers/assignments were

1 made after that. The current assignee/transferee of the mortgage is not a member of
2 MERS.

3 12. Despite the above transfers, there was no recording of any assignment of
4 the mortgage to anyone else. To date, the above deed of trust is still recorded in the
5 Alameda county records, with MERS still named a 'nominee' as described above.

6 13. Since MERS is not owed anything and is not the actual mortgage creditor or
7 representative thereof, the continuing inclusion of its name on the deed of trust is a false
8 statement in the county record and a cloud on the property title.

9 14. The deed of trust states MERS has the power to cancel it if it may become
10 necessary by 'law or custom'.

11 15. On or about February 11, 2011 plaintiff sent a notice rescinding any
12 authorization plaintiff may have given for MERS to continue acting as any 'nominee' on
13 the deed of trust, and requesting that MERS cancel the deed of trust containing its name
14 as a 'nominee'. To date, defendant MERS has failed/refused to cancel the document.

15 16. Since plaintiff never received anything of value from defendant MERS,
16 there is nothing to restore to it

17. The existing deed of trust with MERS name on it is clouding title to the
18. property, impairing its market value.

19 18. Plaintiff has no remedy at law for addressing this situation, and therefore
20 seeks cancellation of the document.

SECOND CAUSE OF ACTION

(Cancellation of Instrument #2)

23 19. On June 5, 2007 plaintiff signed a second deed of trust regarding property
24 located at 9527 Granada Ave., Oakland, California, which named defendant MERS as a
25 'nominee' and 'nominee beneficiary' for Countrywide Bank, FSB, the lender of a
26 mortgage loan plaintiff took out. The deed of trust also stated MERS would also act in
27 the above same 'nominee' capacity for any assigns and successors of the lender. A true

1 and correct copy of the relevant pages of the deed of trust are attached as Exhibit B.

2 20. Paragraphs 7-17 are incorporated here as though set forth in full.

3 **THIRD CAUSE OF ACTION**

4 (Cancellation of Instrument #3)

5 21. On March 19, 2008 plaintiff signed a deed of trust regarding property
6 located at 1650-1652 5th St., Richmond, California (5th Street property), which named
7 defendant MERS as a 'nominee' and 'nominee beneficiary' for Countrywide Bank, FSB,
8 the lender of a mortgage loan plaintiff took out. The deed of trust also stated MERS
9 would also act in the above same 'nominee' capacity for any assigns and successors of the
10 lender. A true and correct copy of the relevant pages of the deed of trust are attached as
11 Exhibit C.

12 22. Paragraphs 7-17 are incorporated here as though set forth in full.

13 **FOURTH CAUSE OF ACTION**

14 (Unjust Enrichment & Constructive Trust Against Defendant BAC Home Loans)

15 23. Paragraphs 1-20 are incorporated herein.

16 24. Defendant BAC Home Loans (f/k/a Countrywide Bank, FSB) is not the
17 creditor/owner of the mortgage. It is also not a mortgage servicer for any actual creditor/
18 owner of the mortgage.

19 25. Despite the above, shortly after each mortgage was originated, this
20 defendant represented to plaintiff that it would be the company to whom plaintiff should
21 make his payments on the above mortgage loans. Defendant made the representation with
22 the intent that plaintiff would rely and act on the representation and begin sending his
23 mortgage payments to defendant.

24 26. Unknown and undisclosed to plaintiff, the defendant made the above
25 representation to plaintiff even though defendant knew it had no contract or agreement for
26 collecting payments with any actual creditor/owner of the mortgage, and had no actual
27 right to receive any such payments.

28

1 27. At the time, plaintiff was unaware of the actual circumstances, had no
2 reason to doubt the representation defendant had made, believed it to be true, reasonably
3 relied on it, and began sending his mortgage payments to defendant.

4 28. Since August 2007 plaintiff has sent defendant a total of \$50,273 of
5 principal and interest payments relating to the mortgages regarding the Granada property.

6 29. Since May 2008 plaintiff has sent defendant a total of \$9222 of principal
7 and interest payments relating to the mortgage regarding the 5th Street property

8 30. Beginning in the spring of 2010 plaintiff began hearing reports in the media
9 of the serious problems of fraud within the mortgage industry, and decided to investigate
10 his own mortgages.

11 31. In April 2010 plaintiff began sending correspondence to defendant BAC
12 Home Loans asking for certain documents. In February 2011 plaintiff sent defendant a
13 request which, in part, sought an accounting of (i) to whom defendant may have been
14 sending plaintiff's monthly payments and (ii) documentation (i.e. assignment/ transfer
15 documents) which would show that the party defendant was sending payments to was the
16 actual mortgage owner at the time. To date, defendant has refused to provide this simple
17 and reasonable accounting, or provide any information whatever on the subject.

18 32. Based on information and belief, defendant BAC has not been sending any
19 of plaintiff's payments to any actual creditor/owner of the mortgage.

20 33. Due to the above, defendant BAC has wrongfully obtained monies from
21 plaintiff in the amount of \$59,495, and plaintiff seeks recovery from defendant in that
22 amount.

REQUEST FOR RELIEF

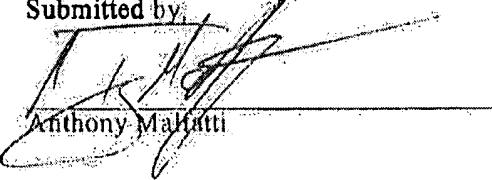
24 Based on the above, plaintiff seeks the following relief:

25 1. A judgment and order from the Court that either (i) directs MERS to sign a
26 cancellation document under its existing powers in the deed of trust, or (2) directly
27 cancels the deed of trust which contains MERS name in it.

1 2. Judgment against defendant BAC Home Loans in the amount of \$59,495.

2 Date: June 20, 2011

3 Submitted by:

4 
5 Anthony Malfatti

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Exhibit 4 - 1 of 3

A N i g u . T i t l e
1 5 6 7 6 9 8 - 0 0 -

Recording Requested By:
D. DE TAR

RECORDING REQUESTED BY:
ALLIANCE TITLE COMPANY

After Recording Return To:
COUNTRYWIDE HOME LOANS, INC.

ME SV-72 DOCUMENT PROCESSING
P.O. Box 10423
Van Nuys, CA 91410-0423

Prepared By:
JENNIN TREVINO



2007428322 12/28/2007 08:30 AM
OFFICIAL RECORDS OF ALAMEDA COUNTY
PATRICK O'CONNELL
RECORDING FEE: \$6.00

23 POS

810 169738126 D2 001 003

03
27

[Space Above This Line For Recording Date)

11567698-002
(Escrow/Closing #)

00016973812606007
(Doc ID #)

DEED OF TRUST

MIN1001337-0002059993-5

DEFINITIONS

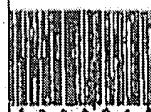
Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

- (A) "Security Instrument" means this document, which is dated JUNE 08, 2007, together with all Riders to this document.
(B) "Borrower" is
ANTHONY A MALFATTI, AN UNMARRIED MAN

CALIFORNIA-Single Family-Public Notary-Style Uniform Instrument with Record

4A(CA)(2007) CIVL (2007)(d) V1.0 Michigan Notaries, Inc. (507)821-7291
CONVA

Form 8000 401



20091



16973812600001000A

Ex A 2/3

DOC ID #: 00016873812606007

Borrower's address is
2527 GRANADA AVENUE, OAKLAND, CA 94605

Borrower is the trustee under this Security Instrument.

(C) "Lender" is
Countrywide Bank, FSB.

Lender is a FDIC INSURED BANK
organized and existing under the laws of THE UNITED STATES

Lender's address is
1199 North Fairfax St., Ste. 500, Alexandria, VA 22314

(D) "Trustee" is
RECONTRUST COMPANY, N.A.

225 W HILLCREST DRIVE, MSN: 70-02, THOUSAND OAKS, CA 91360

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (800) 679-MERS.

(F) "Note" means the promissory note signed by Borrower and dated JUNE 05, 2007. The Note states that Borrower owes Lender
YOUR HUNDRED SIXTY NINE THOUSAND and 00/100

Dollars (U.S. \$ 669,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than JULY 01, 2037.

(G) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(H) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(I) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower (check box as applicable):

- | | | |
|-----------------------------------------------------------|---------------------------------------------------------|---------------------------------------------------|
| <input checked="" type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Condominium Rider | <input type="checkbox"/> Second Home Rider |
| <input type="checkbox"/> Balloon Rider | <input type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> 1-4 Family Rider |
| <input type="checkbox"/> VA Rider | <input type="checkbox"/> Biweekly Payment Rider | <input type="checkbox"/> Other(s) (specify) _____ |

(J) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(K) "Community Association Dues, Fees and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(L) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(M) "Escrow Items" means those items that are described in Section 3.

(N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii)

Ex # 3/3

DOC ID #: 00016973812806807
conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(Q) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(P) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3300), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(R) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the

COUNTY

of

ALAMEDA

[Type of Recording Jurisdiction]

[Name of Recording Jurisdiction]

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

Parcel ID Number: 123456

9527 GRANADA AVENUE, OAKLAND
[Street/City]

which currently has the address of

California 94608 ("Property Address");
[Zip Code]

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right to exercise any or all of those interests, including,

§ 8A(1)(A) (part)

GHL (88405)

Page 9 of 16

Form 2008-409

Exhibit B 1 of 4

Recording Requested By:
D. DE TAK

After Recording Return To:
COUNTRYWIDE HOME LOANS, INC.

MS SV-79 DOCUMENT PROCESSING
P.O. Box 10423
Van Nuys, CA 91410-0423
Prepared By:
JENNIE TREVINO

[Space Above This Line For Recording Date]

1154768-002 00016973813406007
(Escrow/Closing #) (Doc ID #)

DEED OF TRUST AND ASSIGNMENT OF RENTS

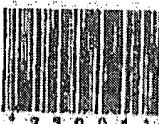
MIN1001337-0002052294-3

This Deed of Trust secures an obligation which calls for payment of interest at a variable interest rate.
THIS DEED OF TRUST is made this 8th day of JUNE, 2007, between
ANTHONY A MALFATTI, AN UNMARRIED MAN

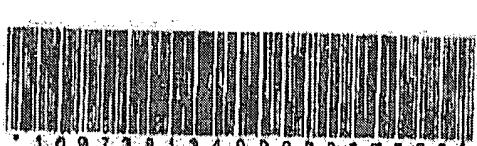
whose address is,
9527 GRANADA AVE, OAKLAND, CA 94608
herein called "Trustor,"
RECONTRUST COMPANY, N.A.
235 W HILLCREST DRIVE, MENT ID-02, THOUSAND OAKS, CA 91360
herein called "Trustee," and MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., ("MERS")
a Delaware corporation with an address of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.
MERS is the "Beneficiary" under this Deed of Trust and is acting solely as a nominee for
Countrywide Bank, FSB.
("Lender" or "you") and its successors and assigns, with an address of
1199 North Fairfax St. Ste. 500, Alexandria, VA 22314
Trustor irrevocably grants, transfers and assigns to Trustee, in trust and with power of sale, all of the real
property in the City or Town of OAKLAND County of
ALAMEDA State of California, having the street address of
9527 GRANADA AVENUE, OAKLAND, CA 94608

• MERS HELCO - CA Deed of Trust
1D988-CA (10/08)(d/l)

Page 1 of 10



23901



109730134000010089

Ex B 2y

and more specifically described as:
SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

DOC ID #: 00016971813406007

Parcel ID Number: 043A-4687-002

now or hereafter erected on the property, and all easements, rights, appurtenances, rents (subject however to the rights and authorities given herein to Lender to collect and apply such rents), royalties, mineral, oil and gas rights and profits, water, water rights, and water stock, and all fixtures now or hereafter attached to the property, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the property covered by this Deed of Trust; and all of the foregoing, together with said property (or the household estate if this Deed of Trust is on a household) are herein referred to as the "Property."

TRUSTOR UNDERSTANDS and agrees that MBRS is a separate corporation acting solely as nominee for Lender and Lender's successors and assigns, and holds only legal title to the interests granted by Trustor in this Deed of Trust; but, if necessary to comply with law or custom, MBRS (as nominee for Lender and Lender's successors and assigns) has the right, to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property, and to take any action required of Lender including, but not limited to, releasing or canceling this Deed of Trust.

1. THIS DEED OF TRUST SECURES:

a. All of the obligations of Trustor in favor of Lender or under or under the terms of a revolving credit agreement dated JUNE 5, 2007, herein called Agreement. The Agreement provides, among other things, for the payment of all sums advanced by Lender from time to time pursuant to the Agreement and for the payment of interest. The maximum principal obligation under the Agreement to be secured by this Deed of Trust at any one time is ONE HUNDRED SIXTY FOUR THOUSAND FOUR HUNDRED SIXTY FOUR AND 00/100 Dollars (\$164,464.00) unless Lender, with Trustor's written consent, hereafter increases this amount. Advances made by Lender to protect the security of this Deed of Trust or to preserve the Property shall not be subject to the limitation of the preceding sentence.

The security of this Deed of Trust shall not be affected by the extension, renewal or modification from time to time of the obligations, instruments or agreements described above.

b. Payment of any and all obligations and liabilities, whatsoever, whether primary, secondary, direct, indirect, fixed or contingent, whether now or hereafter due from Trustor (or any successor in interest to Trustor) whether created directly or acquired by assignment if the document evidencing such obligation or liability or any other writing signed by Trustor (or any successor in interest to Trustor) specifically provides that said obligation or liability is secured by this Deed of Trust.

Ex B 3/4

DOC ID #: 00016973813406007

v. Performance of each agreement of Trustor herein contained or contained in any other agreement, instrument or other writing to which Trustor is a party if the same is written in connection with any of the foregoing.

d. Payment of all sums to be expended by the Lender or Trustee pursuant to the terms hereof.

2.

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR AGREES:

- a. To keep the Property in good condition and repair; not to remove or demolish any building or improvement thereon; to complete or cause to be completed any construction of buildings or other improvements thereon which are financed in whole or in part by the indebtedness secured hereby; and to restore promptly and in good and workmanlike manner any building or other improvement which may be damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws affecting the Property or requiring any alteration or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said Property in violation of law; to cultivate, irrigate, weed, fertilize, fumigate, spray, prune and do all other acts which from the character or use of the Property may be reasonably necessary, the specific enumerations herein not excluding the general.
- b. To provide, maintain, and deliver to Lender fire and other insurance on the Property satisfactory to and with loss payable to Lender. The amount collected under any fire or other insurance policy may be applied by Lender upon indebtedness secured hereby and in such order as Lender may determine, or at option of Lender, the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default hereunder or invalidate any act done pursuant to such notice.
- c. To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Lender or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Lender or Trustee may appear, and in any suit brought by Lender to foreclose this Deed of Trust. It is agreed that the Lender shall be subrogated to the claims and liens of all parties whose claims or liens are discharged or paid with the proceeds of the Agreement secured hereby.
- d. To pay at least ten days before delinquency all taxes and assessments affecting the Property, including, without limitation, assessment on appurtenant water stock, all encumbrances, charges and liens on the Property or any part thereof, and all costs, fees and expenses of this trust.
- e. That should Trustor fail to make any payment or do any act as herein provided, then Lender or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may:
 - (1) Make or do the same in such manner and to such extent as either may deem necessary or appropriate to protect the security hereof, Lender or Trustee being authorized to enter upon the Property for such purposes.
 - (2) Appear in and defend any action or proceeding purporting to affect the security hereof or the rights or power of Lender or Trustee.

Ex B 4/4

DOC ID #: 00016973013406007

(3) Pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior and superior hereto.

(4) In exercising any such powers, pay necessary expenses, employ counsel and pay his or her reasonable fees.

f. To pay immediately and without demand all sums so expended by Lender or Trustee, with interest from date of expenditure at the maximum rate allowed by law in effect at the date hereof or at the option of Lender, such sums may be added to the principal balance of any indebtedness secured hereby and shall bear the highest rate of interest as any such indebtedness.

g. To pay for any statement provided for by the law in effect on the date hereof regarding the obligation secured hereby in the amount demanded by the Lender but not to exceed the maximum allowed by law at the time the statement is demanded.

3. IT IS FURTHER AGREED THAT:

a. Any award of damages in connection with any condemnation for public use of or injury to the Property or any part thereof is hereby assigned and shall be paid to Lender who may apply or release such monies received by it in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

b. By accepting payment of any sum secured hereby after its due date, or after the filing of notice of default and of election to sell, Lender shall not waive its right to require prompt payment when due of all other sums so secured, or to declare default for failure so to pay, or to proceed with the sale under any such notice of default and of election to sell, for any unpaid balance of said indebtedness. If Lender holds any additional security for any obligation secured hereby, it may enforce the sale thereof at its option, either before, contemporaneously with, or after the sale is made hereunder, and on any default of Trustor, Lender may, at its option, offset against any indebtedness owing by it to Trustor, the whole or any part of the indebtedness secured hereby.

c. Without affecting the liability of any person, including, without limitation, Trustor, for the payment of any indebtedness secured hereby, or the lien of this Deed of Trust on the remainder of the Property for the full amount of any indebtedness unpaid, Lender and Trustee are respectively empowered as follows:

(1) Lender may from time to time and without notice (a) release any person liable for the payment of any of the indebtedness, (b) extend the time or otherwise alter the terms of payment of any of the indebtedness, (c) accept additional security therefor of any kind, including Deeds of Trust or mortgages; (d) alter, substitute or release any of the Property securing the indebtedness.

(2) Trustee may, at any time, and from time to time, upon the written request of Lender (a) consent to the making of any map or plat of the Property, (b) join in granting any easement or creating any restriction thereon, (c) join in any subordination or other agreement affecting this Deed of Trust or the lien or charge thereon or, (d) reconvey, without any warranty, all or any part of the Property.

Exhibit C 1 of 3

Recording Requested By:
M. ODE

After Recording Return To:
COUNTRYWIDE BANK, FSB

MS JV-79 DOCUMENT PROCESSING
P.O Box 10423

Van Nuys, CA 91410-0423
Prepared By:

BARBARA ROSA

[Space Above This Line For Recording Data]

0715-2906386
(Escrow/Closing #)

00019033660203008
(Doc ID #)

DEED OF TRUST

MIN 1001337-0002951335-8

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 24 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated MARCH 19, 2008, together with all Riders to this document.

(B) "Borrower" is

ANTHONY A MALFATTI, AN UNMARRIED MAN

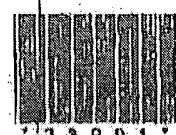
Borrower's address is
4100 REDWOOD ROAD 10-391, OAKLAND, CA 94619
Borrower is the trustor under this Security Instrument.

CALIFORNIA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS

MERS Deed of Trust CA
1006A-CA (02/08)(d/l)

Page 1 of 18

Form 3005 1/0



123901

DOC ID #: 00019033660203008

- (C) "Lender" is
COUNTRYWIDE BANK, FSB
Lender is a **FED SVGS BANK**
organized and existing under the laws of **THE UNITED STATES**
Lender's address is
1199 North Fairfax St. Ste.500, Alexandria, VA 22314
- (D) "Trustee" is
RECONTRUST COMPANY
225 W HILLCREST DRIVE, MSN: T0-02, THOUSAND OAKS, CA 91360
- (E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.
- (F) "Note" means the promissory note signed by Borrower and dated **MARCH 19, 2008**. The Note states that Borrower owes Lender
ONE HUNDRED SIXTEEN THOUSAND and 00/100

Dollars (U.S. \$ 116,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than **APRIL 01, 2038**

- (G) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."
(H) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note and all sums due under this Security Instrument, plus interest.
(I) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be excluded by Borrower [check box as applicable]:

Adjustable Rate Rider
 Balloon Rider
 VA Rider

Condominium Rider
 Planned Unit Development Rider
 Bi-weekly Payment Rider

Second Home Rider
 1-4 Family Rider
 Other(s) [Specify]

- (J) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.
(K) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.
(L) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.
(M) "Escrow Items" means those items that are described in Section 3.
(N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.
(O) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.
(P) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.
(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify a "federally related mortgage loan" under RESPA.
(R) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

Ex C 3/3

DOC ID #: 00019033660203008

TRANSFER OF RIGHTS IN THE PROPERTY

The Beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the

COUNTY [Type of Recording Jurisdiction]	of	CONTRA COSTA [Name of Recording Jurisdiction]
---------------------------------------------------	-----------	---------------------------------------------------------

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

Parcel ID Number: 409-142-001-0

1650-1652 5TH STREET, RICHMOND
[Street/City]

which currently has the address of

California 94801 ("Property Address");
[Zip Code]

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: (a) to exercise any or all of those interests including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and cancelling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. **Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment, or partial payment, if the payment or partial payment are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim

CIVIL COVER SHEET ADR ECP

7544 (Rev. 12/97) (GAND Rev. 1/10)

The US 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

I. (a) PLAINTIFFS

ANTHONY MALFATTI

(b) County of Residence of First Listed Plaintiff ALAMEDA
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

ANTHONY MALFATTI
4100 REDWOOD ROAD #10-391
OAKLAND, CA 94619
510-305-8318

DEFENDANTS

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC;
BAC HOME LOANS SERVICING, LP

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- | | |
|------------------------------------------------------|-----------------------------------------------------------------------------------------------|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|-----------------------------------------|-----------------------------------------|------------------------------|--------------------------------------------------------------------------------------|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> PTF | <input type="checkbox"/> DEF | <input type="checkbox"/> 1 Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 5 |
| Citizens of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 3 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	28 USC 157	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 630 Liquor Laws		<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employees' Liability	<input type="checkbox"/> 640 R.R. & Truck		<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Maritime Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 650 Aviation Regs.		<input type="checkbox"/> 470 Kickbacks Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 660 Occupational Safety/Health		<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 690 Other		<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability			<input type="checkbox"/> 510 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury			<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability				<input type="checkbox"/> 875 Consumer Challenge
<input type="checkbox"/> 196 Franchise				<input type="checkbox"/> 12 USC 3410
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	SOCIAL SECURITY	
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 411 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 861 HIA (1395f)	<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 412 Employment	<input type="checkbox"/> 515 Habeas Corpus	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 891 Agricultural Act
<input type="checkbox"/> 230 Rent Lease & Eviction	<input type="checkbox"/> 413 Housing/ Accommodations	<input type="checkbox"/> 520 General	<input type="checkbox"/> 863 DIWC/DIWU (403(g))	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 533 Death Penalty	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights		<input type="checkbox"/> 895 Freedom of Information Act
<i>(2)</i>	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition		
ORIGIN			IMMIGRATION	
<input type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court		<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
		<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee	<input type="checkbox"/> 871 IRS - Third Party
			<input type="checkbox"/> 465 Other Immigration Actions	26 USC 7609
			FEDERAL TAX SUITS	
			<input type="checkbox"/> 470 Taxes (U.S. Plaintiff or Defendant)	
			<input type="checkbox"/> 471 IRS - Third Party	

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. §1332

Brief description of cause:

Cancellation of Instruments; Unjust Enrichment & Constructive Trust

VII. REQUESTED IN COMPLAINT:

 CHECK IF THIS IS A CLASS ACTION DEMAND \$ 59,495
UNDER F.R.C.P. 23CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE
"NOTICE OF RELATED CASE". NONEIX. DIVISIONAL ASSIGNMENT (CIVIL, L.R. 3-2)
(PLACE AND "X" IN ONE BOX ONLY) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA

DATE

6/23/11

SIGNATURE OF ATTORNEY OF RECORD

Exhibit E

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

ANTHONY MALFATTI,

Plaintiff,

No. C 11-03142 WHA

v.

MORTGAGE ELECTRONIC
REGISTRATIONS SYSTEMS, INC. and
BAC HOME LOANS SERVICING, LP,

Defendants.

**ORDER GRANTING
IN PART DEFENDANTS'
MOTION TO DISMISS AND
VACATING HEARING**

INTRODUCTION

In this action for cancellation of deeds, defendants move to dismiss for failure to state a claim. For the following reasons, the motion is **GRANTED IN PART AND DENIED IN PART**.

STATEMENT

Plaintiff Anthony Malfatti signed two deeds of trust for property located in Oakland in June 2007. Plaintiff signed a deed of trust for property located in Richmond in March 2008. Defendant MERS was listed as a beneficiary and a nominee on all three deeds. Shortly after each deed was recorded, defendant BAC Home Loans Servicing "represented to plaintiff that it would be the company to whom plaintiff should make his payments on the above mortgage loans" (Compl. ¶¶ 7, 19, 21, 25).

In the spring of 2011, "plaintiff began hearing reports in the media of the serious problems of fraud within the mortgage industry, and decided to investigate his own mortgages."

1 In February 2011, plaintiff sent a letter to BAC requesting a summary of his mortgage payments.
2 Plaintiff did not receive any information from BAC in response. Plaintiff now alleges that
3 "BAC has not been sending any of plaintiff's payments to any actual creditor/owner of the
4 mortgage," and that BAC wrongfully collected \$59,495 in mortgage payments from plaintiff
5 (*id.* at ¶¶ 30–33).

6 That same month, "plaintiff sent a notice rescinding any authorization plaintiff may
7 have given for MERS to continue acting as any 'nominee' on the deed of trust, and requesting
8 that MERS cancel the deed of trust containing its name as 'nominee.' To date, defendant
9 MERS has failed/refused to cancel the document" (*id.* at ¶¶ 15).

10 Plaintiff, who proceeds *pro se*, commenced the present action in June 2011.
11 Plaintiff seeks cancellation of all three deeds of trust. His complaint also alleges unjust
12 enrichment and constructive trust against defendant BAC. All defendants now move to
13 dismiss for failure to state a claim. Plaintiff filed an opposition to this motion in August 2011
14 (Dkt. No. 17). No reply has been filed by defendants.

15 ANALYSIS

16 To survive a motion to dismiss, a complaint must contain sufficient factual matter,
17 accepted as true, to state a claim for relief that is plausible on its face. *Ashcroft v. Iqbal*,
18 556 U.S. 662, 129 S. Ct. 1937, 1949 (2009). A claim is facially plausible when there are
19 sufficient factual allegations to draw a reasonable inference that a defendant is liable for the
20 misconduct alleged. While a court "must take all of the factual allegations in the complaint
21 as true," it is "not bound to accept as true a legal conclusion couched as a factual allegation."
22 *Id.* at 1949–50 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).
23 "[C]onclusory allegations of law and unwarranted inferences are insufficient to defeat a
24 motion to dismiss for failure to state a claim." *Epstein v. Wash. Energy Co.*, 83 F.3d 1136,
25 1140 (9th Cir. 1996) (citation omitted).

26 1. REQUEST FOR JUDICIAL NOTICE.

27 Defendants request that judicial notice be taken of several items. A judicially noticed
28 fact must be one not generally subject to reasonable dispute that is either generally known within

1 this territorial jurisdiction or is capable of accurate and ready determination by resort to sources
2 whose accuracy cannot reasonably be questioned. FRE 201(b).

3 Defendants request that judicial notice be taken of: (1) a deed of trust, recorded with the
4 Alameda County Recorder's Office on July 14, 2005 as document number 2005300330; (2) an
5 open end deed of trust, recorded with the Alameda County Recorder's Office on August 26,
6 2005 as document number 2005368611; (3) a deed of trust, recorded with the Alameda County
7 Recorder's Office on December 20, 2007 as document number 2007426322; (4) a deed of trust
8 and assignment of rents, recorded with the Alameda County Recorder's Office on December 20,
9 2007 as document number 2007426323; and (5) a deed of trust, recorded with the Contra Costa
10 County Recorder's Office on April 1, 2008 as document number 2008-0069259-00. The first
11 two deeds are not at issue in the present action. Accordingly, defendants' request for judicial
12 notice as to these two documents is **DENIED**. The other three deeds are relevant to the present
13 action as plaintiff seeks to cancel these documents and defendant MERS is listed as a beneficiary
14 and nominee on all three. They are also matters of public record, thus are not subject to
15 reasonable dispute and are capable of accurate and ready determination. Defendants' request
16 for judicial notice as to documents three, four, and five is **GRANTED**.

17 **2. CANCELLATION OF INSTRUMENTS.**

18 Plaintiff seeks cancellation of the three deeds of trust — two deeds for the Oakland
19 property and one deed for the Richmond property. On each of these deeds, MERS is listed as a
20 beneficiary and a nominee for the lender (RJN Exh. C-E). Plaintiff argues that after he secured
21 the mortgages the lender assigned them to another party, but that "there was no recording of any
22 assignment of the mortgage to anyone else." He further alleges that "MERS is an organization
23 which purports to act solely and exclusively as a 'nominee' for lenders, and successors/assigns
24 of lenders, who are members of MERS." Plaintiff alleges that the "current assignee/transferee
25 of the mortgage is not a member of MERS" (Compl. ¶¶ 9, 11-12).

26 Plaintiff argues that he has been injured because the "the continuing inclusion of
27 [MERS's] name on the deed of trust is a false statement in the county record" that "is clouding
28 title to the property, impairing its market value." Further, plaintiff argues that he "has no remedy

1 at law for addressing this situation, and therefore seeks cancellation of the document" (*id.* at
2 ¶¶ 17–18).

3 Plaintiff fails to show the necessity of cancelling the deeds. "A written instrument, in
4 respect to which there is a reasonable apprehension that if left outstanding it may cause serious
5 injury to a person against whom it is void or voidable, may, upon his application, be so
6 adjudged, and ordered to be delivered up or cancelled." Cal. Civ. Code § 3412. Plaintiff fails to
7 explain how he will be caused serious injury if the deeds are not cancelled, or how having MERS
8 listed on his deeds damaged his property value. Plaintiff thus fails to state a plausible claim for
9 cancellation of the deeds, and accordingly defendants' motion to dismiss plaintiff's first three
10 claims is **GRANTED**.

11 **3. CONSTRUCTIVE TRUST AND UNJUST ENRICHMENT.**

12 Plaintiff also alleges constructive trust and unjust enrichment against defendant BAC.
13 Each claim is considered in turn.

14 **A. Constructive Trust.**

15 Plaintiff's fourth claim for relief is partially for constructive trust. "A constructive trust
16 is an involuntary equitable trust created by operation of law as a remedy to compel the transfer
17 of property from the person wrongfully holding it to the rightful owner." It is an equitable
18 remedy to prevent unjust enrichment. *Burlesci v. Peterson*, 68 Cal. App. 4th 1062, 1069 (1998).
19 As a constructive trust is a remedy, it is not a claim for relief in itself. Accordingly, defendants'
20 motion to dismiss the claim for constructive trust is **GRANTED**.

21 **B. Unjust Enrichment.**

22 Plaintiff argues that BAC was unjustly enriched by wrongly accepting his mortgage
23 payments. Unjust enrichment is the "receipt of a benefit and unjust retention of the benefit
24 at the expense of another." *Lectrodryer v. SeoulBank*, 77 Cal. App. 4th 723, 726 (2000).
25 Defendant argues that BAC "is a subsidiary of Bank of America and is *servicing* the subject
26 loans" (Br. 9) (emphasis in original).

27 Plaintiff, however, alleges that he made \$59,495 in mortgage payments to BAC.
28 Plaintiff now alleges that BAC was never authorized to receive his payments and unjustly

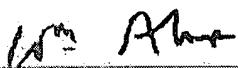
1 retained this benefit. Plaintiff has pled sufficient facts to state a plausible claim for unjust
2 enrichment. As such, defendants' motion to dismiss this claim is **DENIED**.

3 **CONCLUSION**

4 For the foregoing reasons, defendants' motion to dismiss is **GRANTED IN PART AND**
5 **DENIED IN PART**. Defendants' motion to dismiss all three of plaintiff's cancellation of
6 instrument claims and the constructive trust claim is **GRANTED**. Defendants' motion to dismiss
7 the unjust enrichment claim is **DENIED**. Plaintiff may seek leave to amend the complaint and
8 will have **TWENTY-ONE CALENDAR DAYS** from the date of this order to file a motion, noticed
9 on the normal 35-day track, for leave to file an amended complaint. Plaintiff must append to
10 his motion a proposed amended complaint that clearly explains how the amendments cure
11 the defects identified herein. Defendants' request for judicial notice is **GRANTED IN PART**.
12 The hearing scheduled for December 8, 2011 is **VACATED**.

13
14 **IT IS SO ORDERED.**

15
16 Dated: November 29, 2011.
17

18 
19 WILLIAM ALSUP
20 UNITED STATES DISTRICT JUDGE
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

ANTHONY MALFATTI,

Plaintiff,

Case Number: CV11-03142 WHA

CERTIFICATE OF SERVICE

v.
MORTGAGE ELECTRONIC
REGISTRATIONS SYSTEMS, INC. et al,

Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on November 29, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Anthony Malfatti
4100 Redwood Road #10-391
Oakland, CA 94619

Dated: November 29, 2011

Richard W. Wicking, Clerk
By: Dawn Toland, Deputy Clerk

Exhibit F

UNITED STATES DISTRICT COURT

Northern District of California

San Francisco Division

11 ANTHONY MALFATTI, No. C 11-03142 LB
12 Plaintiff,
13 v. ORDER GRANTING DEFENDANT'S
14 MORTGAGE ELECTRONIC MOTION FOR SUMMARY
REGISTRATIONS SYSTEMS, INC.; and JUDGMENT
15 BAC HOME LOANS SERVICING, LP., [ECF No. 74]
16 Defendants.

INTRODUCTION

18 The remaining claim in this case is Plaintiff Anthony Malfatti's claim for unjust enrichment
19 against Defendant Bank of America ("BOA"), which is the successor by merger to BAC Home
20 Loans Servicing (formerly known as Countrywide Bank and referred to herein as "BAC"). Malfatti
21 claimed that he sent \$59,495 in mortgage payments to BAC based on BAC's representations that it
22 was the creditor/owner of his mortgage, and BAC retained the funds even though it was not the
23 creditor. See Complaint, ECF No. 1, at 4.¹ Malfatti wants the money back. BOA moves for
24 summary judgment, arguing that Malfatti lacks standing, is judicially estopped from asserting his
25 claim, lacks any factual basis for it, and cannot demonstrate damages. See Motion, ECF No. 74.
26 Malfatti opposes summary judgment, arguing that BOA has not proven its case and is wrong about

27
28 ¹ Citations are to the Electronic Case File ("ECF") with pin cites to the electronically-generated page number at the top of the document.

1 the estoppel and standing issues. Opp'n, ECF No. 85. For the reasons discussed below, the court
2 GRANTS BOA's motion for summary judgment.

3 **STATEMENT**

4 **I. UNDISPUTED FACTS**

5 The payments in the lawsuit relate to three mortgage loans on two properties. First, in June
6 2007, Malfatti acquired a \$469,000 loan from Countrywide Bank, FSB, secured by a deed of trust to
7 property located at 9527 Granada Avenue, Oakland, CA 94605. Joint Statement of Undisputed
8 Facts ("JSUF") #1, ECF No. 80 at 2. Second, in June 2007, Malfatti acquired a \$164,464 home
9 equity line of credit from Countrywide secured by a deed of trust to the Granada Avenue property.
10 JSUF #2. Third, in March 2008, Malfatti took out a \$116,000 loan secured by a deed of trust to
11 properties located at 1650-1652 Fifth Street in Richmond, California. JSUF #3.²

12 Malfatti began making payments on the three loans in August 2007 and May 2008. JSUF #18.
13 His loan payments totaled \$59,495, which is the alleged unjust enrichment and the damages amount
14 he requests. See JSUF #4, #12.

15 On April 27, 2009, Malfatti filed for Chapter 7 bankruptcy in the U.S. Bankruptcy Court for the
16 Northern District of California. JSUF #5. In the schedules filed with his bankruptcy petition,
17 Malfatti represented that he possessed no contingent or unliquidated claims of any nature. JSUF #6.
18 Malfatti listed his liabilities in his Chapter 7 bankruptcy petition. See JSUF #7. These included the
19 debts owed to Countrywide Home Lending on his three loans in the total amount of \$698,491.00.
20 *Id.* The bankruptcy court discharged Malfatti's debts on August 6, 2009. JSUF #8.

21 In June 2011, Malfatti filed this lawsuit, and in or around July 2011, he stopped making
22 payments on the loans. JSUF #13; see Complaint, ECF No. 1.

23
24
25 ² Bank of America asks the court to take judicial notice of the three recorded deeds of trust
26 securing the properties, as well as the docket, petition, and discharge order from Malfatti's Chapter 7
27 bankruptcy case. See BOA Request for Judicial Notice, ECF No. 75. These are public-record
28 documents that support the facts in the JSUF. Malfatti does not object and the court may take notice
of the public records at issue. See Fed. R. Evid. 201; *Lee v. City of Los Angeles*, 250 F.3d 668, 689
(9th Cir. 2001). Accordingly, the court takes judicial notice of them.

II. RELEVANT PROCEDURAL HISTORY

This suit was assigned first to one district judge, who dismissed without prejudice Malfatti's three claims against Mortgage Electronic Registrations for cancellation of deeds and his claim against BOA for constructive trust. *See* 11/29/11 Order, ECF No. 21. The case was transferred to another judge, who dismissed with prejudice the same claims in an amended complaint, leaving only the claim for unjust enrichment. *See* 2/10/12 Order Dismissing Claims, ECF No. 34 at 6. With the parties' consent, the case was assigned to the undersigned on April 16, 2012. 4/16/12 Order, ECF No. 41.

9 In November 2012, the court continued the trial date from April to September 2013 based on the
10 parties' explanation that they needed additional time to resolve outstanding discovery disputes
11 before they could prepare their summary judgment motions. *See* ECF Nos. 58-59. Neither party
12 sought judicial resolution of any discovery dispute. *See generally* Docket.

13 On January 2, 2011, BOA filed its first motion for summary judgment. See ECF No. 60.
14 Malfatti responded that he needed even more time to complete discovery. See ECF No. 67. The
15 court granted his request for additional time, set a schedule for the additional discovery, and denied
16 BOA's summary judgment motion without prejudice. See ECF No. 73. The revised scheduling
17 order provided deadlines for Malfatti to request discovery and BOA to respond and produce it. *Id.*
18 It also provided a deadline for the parties to file a joint letter seeking judicial resolution of any
19 discovery disputes. *Id.* at 5. Malfatti did not object to BOA's subsequent discovery responses, and
20 the parties did not bring any discovery disputes to the court's attention. See, generally Docket;
21 JSUF #22-23.

22 On May 16, 2013, BOA filed its pending motion for summary judgment (“Motion”), ECF No.
23 74.

ANALYSIS

25 Malfatti's claim for unjust enrichment is based on his allegations that BOA failed to transfer to
26 his lender the amounts Malfatti owed to the lender on his real property loans. JSUF # 9. The loan
27 payments that Malfatti identifies as the basis for his unjust enrichment claim are the loan payments
28 that he believes should have been paid to the creditor/owner of the mortgage. JSUF # 10. In other

1 words, Malfatti does not claim the right to retain these payments. JSUF #11.

2 BOA moves for summary judgment on the following grounds: (1) Malfatti lacks standing
3 because he is asserting a claim that belongs to his lender or, alternatively, the Bankruptcy Trustee;
4 (2) judicial estoppel bars his claim; and (3) he lacks facts to support liability or damages. *See*
5 Motion at 7. Malfatti counters that (1) he has standing, (2), his Chapter 7 Bankruptcy does not bar
6 his claim, and (3) disputed issues of material fact preclude summary judgment. Opp'n at 2-3. The
7 court first addresses BOA's threshold standing and judicial estoppel arguments and then turns to the
8 merits of Malfatti's claim.

9 **I. STANDING AND JUDICIAL ESTOPPEL**

10 Standing is a jurisdictional requirement that cannot be waived and is properly addressed under
11 Rule 12(b)(1). *See United States v. Hays*, 515 U.S. 737, 742 (1995); *Chandler v. State Farm Mut.*
12 *Auto. Ins. Co.*, 598 F.3d 1115, 1122 (9th Cir. 2010). The party asserting the claim has the burden of
13 establishing standing. *See Colwell v. Dept. of Health and Human Servs.*, 558 F.3d 1112, 1121 (9th
14 Cir. 2009). The standing doctrine encompasses constitutional requirements and prudential
15 considerations. *See Valley Forge Christian College v. Americans United for Separation of Church*
16 & *State, Inc.*, 454 U.S. 464, 471 (1982); *Sahni v. American Diversified Partners*, 83 F.3d 1054, 1057
17 (9th Cir. 1996).

18 From a constitutional perspective, Article III's case-or-controversy requirement requires the
19 following for each claim: (1) the party invoking federal jurisdiction must have suffered some actual
20 or threatened injury; (2) the injury must be fairly traceable to the challenged conduct; and (3) a
21 favorable decision would likely redress or prevent the injury. *See Friends of the Earth, Inc. v.*
22 *Laidlaw Envtl. Servs. (TOC)*, 528 U.S. 167, 180-81, 185 (2000); *Lujan v. Defenders of Wildlife*, 504
23 U.S. 555, 560-61 (1992); *Valley Forge Christian College*, 454 U.S. at 472; *Sahni*, 83 F.3d at 1057.

24 The prudential limitations on federal court jurisdiction require the following: (1) a party must
25 assert his own legal rights and interests, not those of others; (2) courts will not adjudicate
26 "generalized grievances;" and (3) a party's claims must fall within the zone of interests that is
27 protected or regulated by the statute or constitutional guarantee in question. *See Valley Forge*
28 *Christ. College*, 454 U.S. at 474-75; *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1122 (9th Cir. 2009).

1 **A. Whether Malfatti is Asserting the Claim of His Creditor**

2 BOA first argues that it is entitled to summary judgment because Malfatti suffered no injury and
3 thus lacks standing. *See Motion at 12-14.* “Plaintiff’s allegations that ‘[BOA] has not been sending
4 any of plaintiff’s payments to any actual creditor/owner of the mortgage’ do not assert any actual
5 harm suffered by Plaintiff, but rather attempt to state a claim for his lender.” *Id.* at 13 (quoting
6 Complaint ¶ 32). Malfatti does not directly respond to this argument. *See Opp’n.*

7 In support of its argument, BOA cites cases affirming the general rule that a party cannot enforce
8 the legal rights of third parties. *See McCallum v. California Dep’t of Corr. & Rehab.*, 647 F.3d 870,
9 879-80 (9th Cir. 2011) (“a litigant may assert only his own legal rights and interests and cannot rest
10 a claim to relief on the legal rights or interests of third parties”); *Coal. of Clergy, Lawyers, &*
11 *Professors v. Bush*, 310 F.3d 1153, 1163 (9th Cir. 2002) (same); *Tileston v. Ullman*, 138 U.S. 44, 46
12 (1943) (same). But those cases do not dispose of the standing issue here. BOA provides no
13 authority for the proposition that a bank who retains loan payments that it has no right to (and
14 instead belong to a different loan servicer) can defeat the borrower/lender’s claim for lack of
15 standing. Not only would that reward someone with no right to the payments, but also, it implicates
16 Malfatti’s obligations to the alleged third-party servicer. At least on this record, and in the absence
17 of case law to the contrary, the court finds that Malfatti has standing. *See also Restatement (First) of*
18 *Restitution* § 126 (1937); *Restatement (Third) of Restitution & Unjust Enrichment* § 64 (2011)
19 (“When a claimant asserts a right to restitution from identifiable property in the hands of the
20 recipient, it is not a defense to show that the claimant’s rights to the property in question are inferior
21 to those of a third person.”).

22 **B. Post-Bankruptcy Standing**

23 BOA next argues that Malfatti lacks standing because he filed for Chapter 7 bankruptcy in 2009,
24 which transferred his current right of action to the Chapter 7 bankruptcy trustee. *Motion at 14-16.*
25 Malfatti responds that his current claims are “post-petition property” unaffected by the bankruptcy
26 estate and that BOA provides no evidence that his unjust enrichment “claim herein existed, or that
27 Malfatti knew about it, prior to the filing of the bankruptcy and the creation of the bankruptcy
28 estate.” *Opp’n*, ECF No. 85 at 9. Based on the record presented, the court grants summary

1 judgment to BOA to the extent Malfatti seeks to recoup his pre-petition payments, but denies BOA's
2 motion to the extent Malfatti's claims are based on payments made after April 27, 2009.

3 The Bankruptcy Code provides that, with some exceptions, a bankruptcy estate is comprised of
4 "all legal or equitable interests of the debtor in property as of the commencement of the case." 11
5 U.S.C. § 541(a)(1). In order to ensure a precise accounting, the debtor has an ongoing affirmative
6 obligation to file and update a schedule of assets and liabilities to the bankruptcy court, including all
7 pending and contingent claims. Fed. R. Bankr. P. 1007(b)(1); 11 U.S.C. §§ 521(a)(1), 541(a)(1);
8 *Hamilton v. State Farm Fire & Cas. Co.*, 270 F.3d 778, 785 (9th Cir. 2001). At the conclusion of
9 the bankruptcy proceedings, all assets properly scheduled by the debtor, and not otherwise
10 administered by the trustee, are "abandoned to the debtor." 11 U.S.C. § 554(c).

11 Assets, including causes of action, that a debtor fails to properly disclose in bankruptcy remain
12 the property of the bankruptcy estate even after the case is closed. *See Dunmore v. United States*,
13 358 F.3d 1107, 1112 (9th Cir. 2004); *In re Lopez*, 283 B.R. 22, 28 (B.A.P. 9th Cir. 2002); *Cusano v.*
14 *Klein*, 264 F.3d 936, 945-46 (9th Cir. 2001). In such cases, the bankruptcy trustee, as the
15 representative of the estate, succeeds to the debtor's right to pursue causes of action that are the
16 property of the estate. 11 U.S.C. § 323(a); *see In re Alcala*, 918 F.2d 99, 102 (9th Cir. 1990). "[A]
17 chapter 7 trustee can . . . prosecute [an action], settle it, abandon it, or arrange for [the debtor] to
18 prosecute it in exchange for the estate receiving a share of the proceeds." *See In re Lopez*, 283 B.R.
19 at 28. Thus, "[w]hen a party fails to schedule a claim in bankruptcy, that claim remains the
20 property of the bankruptcy estate even after discharge, and the debtor lacks standing to pursue it."
21 *Holland & Knight, LLP v. Deatley*, 357 Fed. App'x 83, 85 (9th Cir. 2009) (citing *Dunmore*, 358
22 F.3d at 1112)).

23 In opposition to BOA's motion, Malfatti does not dispute that he did not disclose his current
24 claim to the bankruptcy court. Instead, he contends that his unjust enrichment claim is not property
25 of the bankruptcy estate because he did not file suit until more than two years after filing for
26 bankruptcy. Opp'n, ECF No. 67 at 3-7. He also contends that summary judgment is not warranted
27 because BOA has not presented evidence that his claim existed or he knew about it before filing for
28 bankruptcy. *Id.* at 4. The court disagrees with Malfatti's analysis. A claim is not "post-petition

1 property" merely because the debtor did not file suit until after the bankruptcy case is closed. And
2 the court's own research shows that the Bankruptcy Code broadly defines a pre-petition claim as a
3 "right to payment, whether or nor such right is reduced to judgment, liquidated, unliquidated, fixed,
4 contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured." 11
5 U.S.C. § 101(5)(A).

6 But BOA's argument fares no better. BOA contends that Malfatti lacks standing to bring his
7 unjust enrichment claim because he failed to disclose it to the bankruptcy court. Motion at 14-16.
8 BOA relies on state court precedent for the proposition that a debtor must disclose potential claims
9 that accrue prior to filing for bankruptcy. *Id.* at 15 (citing *Bostanian v. Liberty Savings Bank, FSB*,
10 52 Cal. App. 4th 1075 (1997)). Relying on California law, BOA contends that Malfatti's claim
11 accrued prior to his filing for Chapter 7 because he had been making payments and could have
12 brought suit before filing for bankruptcy. *Id.* at 15-16 (relying on *Collins v. Los Angeles County*,
13 241 Cal. App. 2d 451, 454 (1966)). Because Malfatti's cause of action accrued under California law,
14 BOA contends Malfatti breached his duty to disclose the claim to the bankruptcy court and lacks
15 standing to assert it now.

16 BOA's argument fails. First, state law determines the existence of a claim, but federal law
17 determines when the claim arises for bankruptcy purposes. *In re Cool Fuel, Inc.*, 210 F.3d 999,
18 1006 (9th Cir. 2000); *Johnson v. Home State Bank*, 501 U.S. 78, 83 (1991). Second, the Ninth
19 Circuit has rejected the "accrual test" because it defines a claim more narrowly than 11 U.S.C. §
20 101(5)(A). See *In re Cool Fuel*, 210 F.3d at 999 (9th Cir. 2000) ("It is well-established that a claim
21 is ripe as an allowable claim in a bankruptcy proceeding even if it is a cause of action that has not
22 yet accrued."); *In re Hexcel Corp.*, 239 B.R. 564 (N.D. Cal. 1999); see also *Gottlieb v. Kest*, 141
23 Cal. App. 4th 110 (2006) (analyzing applicable federal precedent). Instead, federal courts apply
24 different tests depending on the circumstances. See, e.g., *In re Storek*, 355 B.R. 187 (2006) (N.D.
25 Cal. 2006) (discussing the accrual test, conduct test, relationship test and fair contemplation test and
26 quoting the discussion in *Gottlieb*); see also *In re Zilog, Inc.*, 450 F.3d 996 (9th Cir. 2006) (applying
27 the fair contemplation test in a discrimination case); *In re Cool Fuel*, 210 F.3d at 1006-07 (applying
28 fair contemplation test in a tax case); *Hassanally v. Republic Bank (In re Hassanally)*, 208 B.R. 46,

1 53 (B.A.P. 9th Cir. 1997) (negligent construction claim). The strong trend of in-circuit authority
2 suggests that the court should apply the fair contemplation test.

3 Regardless, Malfatti persuasively counters that he made most of the payments at issue after he
4 filed for bankruptcy and after his bankruptcy was discharged, and thus, his claims to recover these
5 were not subsumed within the bankruptcy estate. *See Opp'n at 10.* BOA argues that California
6 courts have rejected the “so-called continuing violation doctrine, including as it applied to claims for
7 unjust enrichment based on receipt of mortgage payments.” Reply, ECF No. 86 at 9. But BOA
8 relies on the California case of *Vaca v. Wachovia Mortgage Corporation*, which is inapposite. 198
9 Cal. App. 4th 737, 744-45 (2011). First, that case dealt with accrual for statute of limitations
10 purposes – not for bankruptcy. Second, that court did not involve unjust enrichment of mortgage
11 payments on a continuing basis, like Malfatti alleges. Instead, the court considered whether the
12 “continuing wrong doctrine” postponed the limitations period of a fraud claim and the complaint
13 “contain[ed] no allegations defendants did anything wrong after making the fraudulent mortgage
14 loans in 2000 and 2001. *Id.* In contrast, Malfatti alleges that BOA wrongfully withheld separate
15 mortgage payments both before and after his bankruptcy proceedings. In the absence of any
16 persuasive argument for why Malfatti lacks standing, the court denies the motion for summary
17 judgment on this basis as to the post-bankruptcy payments.

18 **C. Judicial Estoppel**

19 BOA also makes the related argument that Malfatti failed to list his current claims on the
20 schedules accompanying his Chapter 7 petition so that he is judicially estopped from asserting them
21 now. Motion at 16-17. Malfatti does not specifically address BOA’s argument, but seems to rely on
22 the contention previously discussed that his claims did not arise until after bankruptcy. *See Opp'n at*
23 *9-11*

24 Federal law on judicial estoppel governs cases in federal courts regardless of whether they
25 involve state law claims. *Johnson v. Or. Dep't of Human Res. Rehab. Div.*, 141 F.3d 1361, 1364
26 (9th Cir. 1998); *Rissetto v. Plumbers and Steamfitters Local 343*, 94 F.3d 597, 603 (9th Cir. 1996).
27 Judicial estoppel is an equitable doctrine that prevents a party from benefitting by taking one
28 position but then later seeking to benefit by taking a clearly inconsistent position. *Hamilton v. State*

1 *Farm Fire & Cas. Ins. Co.*, 270 F.3d 778, 782 (9th Cir. 2001). Judicial estoppel may be invoked by
2 the court at its discretion. *Morris v. California*, 966 F.2d 448, 453 (9th Cir. 1991). It is intended to
3 protect the integrity of the judicial process by preventing a litigant from “playing fast and loose with
4 the courts.” *Russell v. Rolfs*, 893 F.2d 1033, 1037 (9th Cir. 1990).

5 In the bankruptcy context, where the plaintiff fails to disclose potential claims in his bankruptcy
6 schedules and thereafter sues on them, judicial estoppel serves to protect the bankruptcy system,
7 which depends on full and honest disclosure by debtors of all their assets. *Hamilton*, 270 F.3d at
8 785. When a debtor’s disclosures are incomplete, they impair the interests of the creditors (who
9 plan their actions in the bankruptcy proceeding based on information in the disclosures) and the
10 bankruptcy court (which decides to approve a plan based on the information). *Id.*

11 Several factors help determine whether judicial estoppel applies. *Id.* at 782 (citing *New*
12 *Hampshire v. Maine*, 532 U.S. 742, 750-51 (2001)). “First, a party’s later position must be ‘clearly
13 inconsistent’ with its earlier position.” *Id.* (quoting *New Hampshire*, 532 U.S. at 750). In the
14 bankruptcy context, this inconsistency may result “from asserting a cause of action not raised in a
15 reorganization plan or otherwise mentioned in the debtor’s schedules or disclosure statements.” *Id.*
16 at 783. Second, the party must have “‘succeeded in persuading a court to accept that party’s earlier
17 position.’” *Id.* at 782 (quoting *New Hampshire*, 532 U.S. at 750). “Third, the party seeking to
18 assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on
19 the opposing party if not estopped.” *Id.* (quoting *New Hampshire*, 532 U.S. at 751). These factors
20 are not “‘inflexible prerequisites or an exhaustive formula’” because “[a]dditional considerations
21 may inform the doctrine’s application in specific factual contexts.” *Id.* (quoting *New Hampshire*,
22 532 U.S. at 751). Another factor is whether the party to be estopped acted inadvertently or with an
23 intent to defraud the court or creditors. *Johnson*, 141 F.3d at 1369 (“If incompatible positions are
24 based not on chicanery, but only on inadvertence or mistake, judicial estoppel does not apply.”).

25 Here, BOA argues that Malfatti took inconsistent positions by representing to the bankruptcy
26 court that he had no contingent or unliquidated claims. Motion at 17; *see* JSUF #6. Based on these
27 representations, the bankruptcy court discharged Malfatti’s debts. Motion at 17; *see* JSUF # 10.
28 BOA does not address the other judicial estoppel factors like whether Malfatti would derive an

1 unfair advantage if not estopped and whether he had an intent to defraud.

2 BOA's judicial estoppel argument invokes the same question as their standing argument. When
3 did Malfatti's claim arise for bankruptcy purposes? As discussed, BOA does not address any of the
4 cases discussing when claims arise for bankruptcy purposes. Nor does BOA discuss whether the
5 analysis is different for pre-petition and post-petition payments. *See In re Stroh*, 34 Fed. App'x 562,
6 565 (9th Cir. 2002) (bankruptcy court did not abuse its discretion in determining that Chapter 7
7 debtor's disclaimer of partnership interests in bankruptcy court proceedings barred subsequent
8 claims for either pre-petition or post-petition partnership earnings); *but see In re Ryerson*, 739 F.2d
9 1423, 1426 (9th Cir. 1984) (where, after filing his bankruptcy petition, debtor received payment
10 pursuant to the termination clause of his employment contract, the bankruptcy estate owned the
11 portion of the termination payment based on the debtor's pre-bankruptcy services but not the portion
12 based on post-bankruptcy services).

13 On this record, the court declines to invoke judicial estoppel. There is no evidence that Malfatti
14 acted intentionally. And given the court's ultimate disposition, Malfatti will not derive an unfair
15 advantage from his position in this litigation. The court denies this portion of BOA's motion
16 without prejudice because the court would reconsider the issue based on further briefing.

17 **II. MALFATTI'S UNJUST ENRICHMENT CLAIM**

18 Having rejected BOA's standing and judicial estoppel arguments, the court turns to the crux of
19 the dispute: the evidentiary support for Malfatti's unjust enrichment claim. BOA moves for
20 summary judgment, arguing that Malfatti has no evidence to support his allegations that his
21 payments were not applied to his loan or that he suffered damages. *See Motion at 17-19*. In
22 response, Malfatti argues that disputed issues of material fact preclude summary judgment.
23 *See Opp'n at 4-9.*

24 A motion for summary judgment should be granted if there is no genuine dispute of material fact
25 and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); *Anderson v.*
26 *Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). Material facts are those that may affect the
27 outcome of the case. *Anderson*, 477 U.S. at 248. A dispute about a material fact is genuine if there
28 is sufficient evidence for a reasonable jury to return a verdict for the non-moving party. *Id.* at 248-

1 49.
2 The party moving for summary judgment has the initial burden of informing the court of the
3 basis for the motion and identifying those portions of the pleadings depositions, answers to
4 interrogatories, admissions, or affidavits that demonstrate the absence of a triable issue of material
5 fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). To meet its burden, “the moving party
6 must either produce evidence negating an essential element of the nonmoving party’s claim or
7 defense or show that the nonmoving party does not have enough evidence of an essential element to
8 carry its ultimate burden of persuasion at trial.” *Nissan Fire & Marine Ins. Co., Ltd. v. Fritz
Companies, Inc.*, 210 F.3d 1099, 1102 (9th Cir. 2000); *see Devereaux v. Abbey*, 263 F.3d 1070, 1076
9 (9th Cir. 2001) (“When the nonmoving party has the burden of proof at trial, the moving party need
10 only point out ‘that there is an absence of evidence to support the nonmoving party’s case.’”)
11 (quoting *Celotex Corp.*, 477 U.S. at 325).

12 If the moving party meets its initial burden, the burden shifts to the non-moving party, which
13 must go beyond the pleadings and submit admissible evidence supporting its claims or defenses and
14 showing a genuine issue for trial. See Fed. R. Civ. P. 56(e); *Celotex*, 477 U.S. at 324; *Nissan Fire*,
15 210 F.3d at 1103; *Devereaux*, 263 F.3d at 1076. If the non-moving party does not produce evidence
16 to show a genuine issue of material fact, the moving party is entitled to summary judgment. See
17 *Celotex*, 477 U.S. at 323.

18 In ruling on a motion for summary judgment, inferences drawn from the underlying facts are
19 viewed in the light most favorable to the non-moving party. *Matsushita Elec. Indus. Co. v. Zenith
Radio Corp.*, 475 U.S. 574, 587 (1986).

20 Courts in this district have generally³ held that California law permits unjust enrichment claims,

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23
24 ³ Some California courts have held that there is no stand alone cause of action for unjust
enrichment; rather it is “a general principle, underlying various legal doctrines and remedies.”
25 *Herrington v. Johnson & Johnson Consumer Co., Inc.*, No. C 09-1597 CW, 2010 WL 3448531, at
*13 (N.D.Cal. Sept. 1, 2010) (listing cases)); *see also McBride v. Boughton*, 123 Cal. App. 4th 379
26 (2004) (“Unjust enrichment is not a cause of action, however, or even a remedy, but rather a general
27 principle, underlying various legal doctrines and remedies. It is synonymous with restitution.”)
28 (internal citations and quotation marks omitted). Because BOA does not make this argument, the
court need not address it.

1 in which "restitution may be awarded either (1) in lieu of breach of contract damages, where an
2 asserted contract is found to be unenforceable or ineffective, or (2) where the defendant obtained a
3 benefit from the plaintiff by fraud, duress, conversion, or similar conduct, but the plaintiff has
4 chosen not to sue in tort." *Oracle Corp. v. SAP AG*, No. C 07-1658 PJH, 2008 WL 5234260, at *8
5 (N.D. Cal. Dec. 15, 2008) (citing *McBride v. Boughton*, 123 Cal. App. 4th 379, 388 (2004)); *see also*
6 *Wolf v. Wells Fargo Bank, N.A.*, No. C11-01337 WHA, 2011 WL 4831208, at *8 (N.D. Cal. Oct. 12,
7 2011) ("Restitution [under an unjust enrichment theory] may be awarded in lieu of breach of
8 contract damages when the parties had an express contract, but it was procured by fraud or is
9 unenforceable or ineffective for some reason.") (citing *McBride* 123 Cal. App. 4th at 388). "To state
10 a claim for restitution, a plaintiff 'must plead receipt of a benefit and the unjust retention of the
11 benefit at the expense of another.'" *Walters v. Fid. Mortg. of Cal.*, No. 2:09-cv-3317 FCD/KJM,
12 2010 WL 1493131, at *12 (E.D. Cal. Apr. 14, 2010) (quoting *Lectrodryer v. SeoulBank*, 77 Cal.
13 App. 4th 723, 726 (2000)).

14 Here, Malfatti's theory of unjust enrichment is that BOA received his mortgage payments even
15 though it was not the actual servicer of his mortgages and retained the payments rather than passing
16 them along to the lender. *See JSUF #9-10*. BOA meets its initial burden to demonstrate that
17 Malfatti's evidence is insufficient to establish two essential elements of his claim – unjust retention
18 and damages. *See High Tech Gays v. Def. Indus. Security Clearance Office*, 895 F.2d 563, 574 (9th
19 Cir. 1990).

20 As to the evidence of unjust enrichment, BOA first points out that Malfatti has no evidence to
21 support his allegations that his payments were not applied to his loans. Motion at 18. BOA served
22 an interrogatory on Malfatti requesting "all facts that support your allegation at paragraph 24 of the
23 COMPLAINT that 'BAC Home loans . . . is . . . not a mortgage servicer for any actual
24 creditor/owner of the mortgage.'" Richardson Decl. Ex. B, ECF No. 77-4 at 2. Malfatti's response
25 provides no factual support other than that BOA is not identified in his loan documents and that
26 BOA has provided no evidence proving it is the servicer. *See id.* at 2-3.

27 Second, BOA points out that Malfatti has no evidence showing that BOA was not entitled to
28

1 receive his mortgage payments.⁴ See Motion at 18. Another of BOA's interrogatories requested "all
2 facts that support your allegation . . . that [BOA] 'had no contract or agreement for collecting
3 payments with any actual creditor/owner of the mortgage.'" Richardson Decl. Ex. B, ECF No. 77-4
4 at 3. Malfatti's response just referenced the interrogatory response discussed above. *Id.*

5 Third, BOA points to the same interrogatory responses to show that Malfatti lacks evidence that
6 any servicer other than BOA had the right to service the Properties. See Motion at 18. When asked
7 to "[i]dentify the entity that you believe to be the servicer" of the loans, Malfatti did not identify
8 another service and objected that the question was immaterial. See Richardson Decl. Ex. B, ECF
9 No. 77-4 at 4.

10 All of this is in the context of the discovery that Bank of America produced to Plaintiff including
11 itemized loan histories documenting the date, amount, and application of each payment. See Abbott
12 Decl., ECF No. 82, Exh. B. Also, BOA stated in its interrogatory responses that "[p]rior to
13 November of 2012, the servicing rights belonged to Defendant Bank of America, N.A. and its
14 predecessor in interest, Countrywide." See Abbott Decl. Ex. A, ECF No. 82-1 at 3-4.

15 As to evidence about damages, BOA argues that Malfatti lacks evidence that he was damaged
16 based on the undisputed fact that "Plaintiff is not sure if he is alleging that he has been harmed at all
17 by [BOA]." JSUF # 17.

18 In sum, BOA has provided ample evidence to meet its initial burden of identifying the absence of
19 a triable issue of material fact. Accordingly, the burden shifts to Malfatti to produce evidence
20 sufficient to create a genuine issue of material fact. See *Nissan Fire & Marine Ins.*, 210 F.3d at
21 1102-03.

22 Malfatti fails to meet his burden. The crux of Malfatti's argument is BOA's discovery responses
23 were evasive and that the evidence produced is insufficient. See Opp'n at 5-8. Malfatti's objection
24 to the sufficiency of the discovery responses is unpersuasive. Malfatti filed this case in 2011 and
25 has had ample opportunity to conduct discovery. Even after the close of discovery, when the first

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28 ⁴ Malfatti did not dispute his lack of evidence on this point. See Joint Statement of
Undisputed Facts, ECF No. 70 at 5.

1 summary judgment motion was fully briefed, the court denied the motion and let Malfatti conduct
2 even more discovery. *See Order*, ECF No. 73. He did not object to BOA's April 10, 2013 discovery
3 responses and did not challenge their sufficiency with the court. JSUF #22-23. At this point, if the
4 responses are insufficient, the blame lies with Malfatti.

5 Malfatti also argues that BOA has not provided him with "direct evidence of how it came to be
6 the servicer, and on whose behalf it is acting as servicer." Opp'n at 6. But – as stated above –
7 BOA's interrogatory responses say that "[p]rior to November of 2012, the servicing rights belonged
8 to Defendant Bank of America, N.A. and its predecessor in interest, Countrywide." *See Abbott*
9 Decl. Ex. A, ECF No. 82-1 at 3-4. Malfatti cites additional evidence that he contends is insufficient
10 to prove that BOA was his loan servicer or that it ever "forward[ed] the payments to the person
11 entitled to receive them." Opp'n at 8. But these purported insufficiencies do not constitute a
12 dispute of material fact that actually supports Malfatti's affirmative case. Essentially, Malfatti asks
13 the court to infer evidence of liability based on purported weaknesses in the evidentiary record.
14 While the court resolves reasonable inferences in Malfatti's favor, his failure to obtain discovery
15 does not mean he can withstand summary judgment.

16 Finally, Malfatti in essence acknowledges that he has not identified any evidence to counter
17 these facts. BOA proposed that Malfatti's lack of evidence should be an undisputed fact. *See JSUF*
18 14-16. In the initial summary judgment briefing, Malfatti stipulated that his lack of evidence was
19 undisputed. *See ECF No. 70*. Here, Malfatti was ordered to provide legal citations to the evidence
20 supporting his dispute of any proposed undisputed facts. *See Order*, ECF No. 79 at 2 ("If Plaintiff
21 disputes a specific fact, the response shall include legal citations to the evidence supporting
22 Plaintiff's position."). He did not do so.

23 Instead of identifying actual evidence, Malfatti disputes these facts "on the grounds that [BOA's]
24 evidence is 'squishy,' and raises doubts about who [BOA] has been providing payments to." But
25 Malfatti has the burden to provide the evidence and cannot resist summary judgment based on the
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1 perceived weakness (or the squishiness) of his opponent's case.⁵ Accordingly, the court GRANTS
2 BOA's motion for summary judgment.

3 **CONCLUSION**

4 The court GRANTS Defendant's motion for summary judgment. This disposes of ECF No. 74.

5 **IT IS SO ORDERED.**

6 Dated: June 20, 2013


7 LAUREL BEELER
United States Magistrate Judge

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5 Malfatti seems to acknowledge that his claims against BOA are more of a fishing expedition and do not arise from any evidence that BOA has been unjustly enriched. For example, he states that he "filed this action to determine who is the proper payee of the notes, and if the proper payee(s) was receiving his payments." Opp'n at 3.

Exhibit G

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7
8 UNITED STATES DISTRICT COURT

9 Northern District of California

10 San Francisco Division

11 ANTHONY MALFATTI,

No. C 11-03142 LB

12 Plaintiff,

JUDGMENT

13 v.

14 MORTGAGE ELECTRONIC
REGISTRATIONS SYSTEMS, INC.; and
15 BAC HOME LOANS SERVICING, LP.,

16 Defendants.
17

On June 20, 2013, the Court granted Defendant's motion for summary judgment on the only claim remaining in this suit. Pursuant to Federal Rule of Civil Procedure 58, the Court hereby ENTERS judgment in favor of Defendant and against Plaintiff. The Clerk of Court shall close the file in this matter.

21 IT IS SO ORDERED.

22 Dated: June 20, 2013


LAUREL BEELER
United States Magistrate Judge

Exhibit H

2015307077

11/17/2015 09:34 AM

OFFICIAL RECORDS OF ALAMEDA COUNTY
STEVE MANNING
RECORDING FEE

\$1.00



3 PGS

RECORDING REQUESTED BY:
AND WHEN RECORDED MAIL TO:
THE MORTGAGE LAW FIRM, PLC
41689 ENTERPRISE CIRCLE NORTH, STE. 228
TEMECULA, CA 92590
APN 043A-4687-002-00

Trustee Sale No. 124147 Title No. 150265736 Space above for Recorder's use only

IMPORTANT NOTICE

NOTICE OF NOTICE OF DEFAULT AND ELECTION TO SELL

ATTENTION RECORDER: THE FOLLOWING REFERENCE TO AN ATTACHED
SUMMARY IS APPLICABLE TO THE NOTICE PROVIDED TO THE TRUSTOR ONLY
NOTE: THERE IS A SUMMARY OF THE INFORMATION IN THIS DOCUMENT ATTACHED

注：本文件包含一个信息摘要

참고사항: 본 첨부 문서에 정보 요약서가 있습니다

NOTA: SE ADJUNTA UN RESUMEN DE LA INFORMACIÓN DE ESTE DOCUMENTO

TALA: MAYROONG BUOD NG IMPORMASYON SA DOKUMENTONG ITO NA NAKALAKIP
LUU Ý: KÈM THEO ĐÂY LÀ BẢN TRÌNH BÀY TÓM LUỢC VỀ THÔNG TIN TRONG TÀI LIỆU NÀY
IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR
PAYMENTS, IT MAY BE SOLD WITHOUT ANY COURT ACTION, and you may have the
legal right to bring your account in good standing by paying all of your past due payments plus
permitted costs and expenses within the time permitted by law for reinstatement of your account,
which is normally five business days prior to the date set for the sale of your property. No sale date
may be set until approximately 90 days from the date this Notice of Default may be recorded (which
date of recordation appears on this notice). This amount is \$123,960.16 as of 11/12/2015 and will
increase until your account becomes current.

While your property is in foreclosure, you still must pay other obligations (such as insurance and
taxes) required by your Note and Deed of Trust or Mortgage. If you fail to make future payments on
the loan, pay taxes on the property, provide insurance on the property, or pay other obligations as
required in the Note and Deed of Trust or Mortgage, the Beneficiary or Mortgagee may require as a
condition to reinstatement that you provide reliable written evidence that you paid all senior liens,
property taxes, and hazard insurance premiums.

Upon your written request, the Beneficiary or Mortgagee will give you a written itemization of the
entire amount you must pay. You may not have to pay the entire unpaid portion of your account,
even though full payment was demanded, but you must pay all amounts in default at the time
payment is made. However, you and your Beneficiary or Mortgagee may mutually agree in writing
prior to the time the Notice of Sale is posted (which may not be earlier than the end of the three-
month period stated above) to, among other things, (1) provide additional time in which to cure the
default by transfer of the property or otherwise; or (2) establish a schedule of payments in order to
cure your default; or both (1) and (2).

Following the expiration of the time period referred to in the first paragraph of this notice, unless the
obligation being foreclosed upon or a separate written agreement between you and your creditor
permits a longer period, you have only the legal right to stop the sale of your property by paying the
entire amount demanded by your creditor.

See Attached Declaration

TS No. 124147

Title No. 150265736

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST

To find out the amount you must pay, or to arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact:

**HSBC Bank USA, National Association, as Trustee for the Holders of the Deutsche Alt-A Securities, Inc. Mortgage Loan Trust, Mortgage Pass-Through Certificates Series 2007-OA4
c/o The Mortgage Law Firm, PLC
41689 ENTERPRISE CIRCLE NORTH, STE. 228
TEMECULA, CA 92590
619-465-8200**

If you have any questions, you should contact a lawyer or the governmental agency which may have insured your loan. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure.

REMEMBER, YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION. NOTICE IS HEREBY GIVEN:

That The Mortgage Law Firm, PLC is either the original Trustee, the duly appointed Substituted Trustee, or acting as Agent for the Trustee or Beneficiary under Deed of Trust dated 06/05/2007, executed by Anthony A. Malfatti, An Unmarried Man, as Trustor, to secure certain obligations in favor of Mortgage Electronic Registration Systems, Inc. as nominee for Countrywide Bank, FSB, as beneficiary, recorded 12/20/2007, as Instrument No. 2007426322, in Book xx, Page xx, of Official Records in the Office of the Recorder of Alameda County, California describing land therein as more fully described in said Deed of Trust.

Including the Note(s) for the sum of \$469,000.00, that the beneficial interest under said Deed of Trust and the obligations secured thereby are presently held by the Beneficiary; that a breach of and default in, the obligations for which said Deed of Trust is security has occurred in that the payment has not been made of:

THE INSTALLMENT OF PRINCIPAL AND INTEREST WHICH BECAME DUE 08/01/2011, TOGETHER WITH ALL LATE CHARGES, ADVANCES, INTEREST, INSURANCE, TAXES AND ASSESSMENTS, IF APPLICABLE.

That by reason thereof, the present beneficiary under such Deed of Trust has deposited with said duly appointed Trustee, such Deed of Trust and all documents evidencing the obligations secured thereby, and has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby. The undersigned Mortgagee Beneficiary or Authorized Agent for the Mortgagee or Beneficiary pursuant to California Civil Code Section 2923.55(c) declares that the mortgagee, beneficiary or the mortgagee's or beneficiary's authorized agent has either contacted the borrower or tried with due diligence to contact the borrower, or that no contact was required because the individual did not meet the definition of a "borrower" as required by California Civil Code Section 2920.5.

THE MORTGAGE LAW FIRM, PLC

Dated: 11/12/2015


Ryan Remington/Authorized Signature

Ryan

California Declaration of Compliance
(Civ. Code § 2923.55(e))

Borrower(s): ANTHONY A MALFATTI
Loan No.: 1006659469
Property Address: 9527 GRANADA AVE OAKLAND, CA 94605
Trustee's Sale No.: 124147

The undersigned declares as follows:

I am employed by the undersigned mortgage servicer, and I have reviewed its business records for the borrower's loan, including the borrower's loan status and loan information, to substantiate the borrower's present loan default and the right to foreclose. The information set forth herein is accurate, complete and supported by competent and reliable evidence that I have reviewed in the mortgage servicer's business records. Those records reflect one of the following.

- The mortgage servicer contacted the borrower to assess the borrower's financial situation and to explore options for the borrower to avoid foreclosure as required by California Civil Code § 2923.55. Thirty days, or more, have passed since the initial contact was made.
 - The mortgage servicer has exercised due diligence to contact the borrower pursuant to California Civil Code § 2923.55(f) to "assess the borrower's financial situation and explore options for the borrower to avoid foreclosure." Thirty (30) days, or more, have passed since these due diligence efforts were satisfied.
 - The mortgage servicer was not required to comply with California Civil Code § 2923.55 because the individual does not meet the definition of a "borrower" under Civil Code § 2920.5(c).
 - No contact was made with the borrower pursuant to Civil Code § 2923.55 because the above-referenced loan is not secured by a first lien mortgage or deed of trust that secures a loan described in Civil Code § 2924.15(a)
- The mortgage servicer has exercised due diligence to contact the borrower(s) as required by California Civil Code § 2923.55(f)(1) and § 2923.55(f)(3)-(5). However, the telephone contact requirements under § 2923.55(f)(2) were not attempted pursuant to the borrower's previously submitted written cease communication request. Thirty (30) days, or more, have passed since these due diligence efforts were satisfied.

Executed on NOV 12 2015, 2015, at Highlands Ranch, Colorado

Specialized Loan Servicing LLC

By: Aml McKernan
Aml McKernan,
Second Assistant Vice President

Exhibit I

RECORDING REQUESTED BY,

AND WHEN RECORDED MAIL TO:
The Mortgage Law Firm, PLC
41689 Enterprise Circle North, Ste. 228
Temecula, CA 92590
(619) 465-8200



2016078183 04/01/2016 11:04 AM
OFFICIAL RECORDS OF ALAMEDA COUNTY
STEVE MANNING
RECORDING FEE: 34.00



4 PGS

4
M1

NOTICE OF TRUSTEE'S SALE

TS# 124147

RECORDING REQUESTED BY

AND WHEN RECORDED MAIL TO

The Mortgage Law Firm, PLC
41689 ENTERPRISE CIRCLE NORTH, STE. 228
TEMECULA, CA 92590
(619) 465-8200

Trustee Sale No. 124147 Title No. 150265736 Space above for Recorder's use only

NOTICE OF TRUSTEE'S SALE

NOTE: THERE IS A SUMMARY OF THE INFORMATION IN THIS DOCUMENT ATTACHED

注: 本文件包含一个信息摘要

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LUU Y: KÈM THEO ĐÂY LÀ BẢN TRÌNH BÀY TÓM LƯỢC VỀ THÔNG TIN TRONG TÀI LIỆU NÀY

YOU ARE IN DEFAULT UNDER A DEED OF TRUST, DATED 06/05/2007. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

On 04/21/2016 at 12:30 PM, The Mortgage Law Firm, PLC, as duly appointed Trustee under and pursuant to Deed of Trust recorded 12/20/2007, as Instrument No. 2007426322, in book xx, page xx, of Official Records in the office of the County Recorder of Alameda County, State of California, executed by Anthony A. Malfatti, An Unmarried Man,

WILL SELL AT PUBLIC AUCTION TO HIGHEST BIDDER FOR CASH, CASHIER'S CHECK/CASH EQUIVALENT or other form of payment authorized by 2924h(b), (payable at time of sale in lawful money of the United States), At the Fallon Street entrance to the County Courthouse, 1225 Fallon Street, Oakland, CA 94612. All right, title and interest conveyed to and now held by it under said Deed of Trust in the property situated in said County and State, described as: FULLY DESCRIBED IN THE ATTACHED "EXHIBIT A". APN 043A-4687-002

The street address and other common designation, if any, of the real property described above is purported to be: 9527 Granada Avenue, Oakland, CA 94605

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designation, if any, shown herein. Said sale will be made, but without covenant or warranty, expressed or implied, regarding title, possession, or encumbrances, to pay the remaining principal sum of the note(s) secured by said Deed of Trust, with interest thereon, as provided in said note(s), advances, if any, under the terms of said Deed of Trust, fees, charges and expenses of the Trustee and of the trusts created by said Deed of Trust. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is: \$594,078.73

If the Trustee is unable to convey title for any reason, the successful bidder's sole and exclusive remedy shall be the return of monies paid to the Trustee, and the successful bidder shall have no further recourse. The beneficiary under said Deed of Trust heretofore executed and delivered to the undersigned a written Declaration of Default and Demand for Sale, and written Notice of Default and Election to Sell. The undersigned caused a Notice of Default and Election to Sell to be recorded in the county where the real property is located.

Dated: 3/24/2016 THE MORTGAGE LAW FIRM, PLC



Adriana Rivas/Authorized Signature

The Mortgage Law Firm, PLC.
is attempting to collect a debt.
Any information obtained may
be used for that purpose.

41689 Enterprise Circle North, Ste. 228, Temecula, CA 92590 (619) 465-8200
FOR TRUSTEE'S SALE INFORMATION PLEASE CALL 714-730-2727

NOTICE TO POTENTIAL BIDDERS: If you are considering bidding on this property lien, you should understand that there are risks involved in bidding at a trustee auction. You will be bidding on a lien, not on the property itself. Placing the highest bid at a trustee auction does not automatically entitle you to free and clear ownership of the property. You should also be aware that the lien being auctioned off may be a junior lien. If you are the highest bidder at the auction, you are or may be responsible for paying off all liens senior to the lien being auctioned off, before you can receive clear title to the property. You are encouraged to investigate the existence, priority, and size of outstanding liens that may exist on this property by contacting the county recorder's office or a title insurance company, either of which may charge you a fee for this information. If you consult either of these resources, you should be aware that the same lender may hold more than one mortgage or deed of trust on the property.

NOTICE TO PROPERTY OWNER: The sale date shown on this notice of sale may be postponed one or more times by the mortgagee, beneficiary, trustee, or a court, pursuant to Section 2924g of the California Civil Code. The law requires that information about trustee sale postponements be made available to you and to the public, as a courtesy to those not present at the sale. If you wish to learn whether your sale date has been postponed, and, if applicable, the rescheduled time and date for the sale of this property, you may call (714) 730-2727 for information regarding the trustee's sale or visit this Internet Web site - www.servicelinkASAP.com - for information regarding the sale of this property, using the file number assigned to this case: 124147. Information about postponements that are very short in duration or that occur close in time to the scheduled sale may not immediately be reflected in the telephone information or on the Internet Web site. The best way to verify postponement information is to attend the scheduled sale.

EXHIBIT A

LEGAL DESCRIPTION

REF. NO. 124147

**LOT 254, "MAP OF UNIT C, OAK KNOLL" FILED JUNE 25, 1928, MAP BOOK 10, PAGE 79,
ALAMEDA COUNTY RECORDS.**