Carlos Aguirre a/k/a
Luis Carlos Aguirre, PRO PER
28403 Falcon Crest Drive
Canyon Country,
California 91351
(661)414-2866

Superior Court of California, County of Los Angeles
North Valley District, Santa Clarita Courthouse

Carlos Aguirre a/k/a Luis Carlos Aguirre, Plaintiff, V. WELLS FARGO BANK, NA, Successor by Merger with Wachovia Mortgage, FSB (Formerly World Savings Bank, FSB). and DOES 1 through 50 inclusive, Defendants.	CASE NO: **COMPLAINT FOR: QUIET TITLE; DAMAGES, INJUNCTIVE RELIEF AND DECLARATORY RELIEF** **1. QUIET TITLE;** **2. INTENTIONAL MISREPRESENTATION;** **3. FRAUD;** **4. INJUNCTIVE RELIEF;** **5. VIOLATION OF BUSINESS AND PROFESSIONS CODE §17200;** **6. DECLARATORY RELIEF;** **7. FRAUDULENT DOCUMENT RECORDATION;** **8. TRIAL BY JURY DEMANDED.**

In accordance with the Supreme Court of the United States, pro per pleadings may not be held to the same standard as an attorney or lawyer; whose motions, papers and pleadings may

only be viewed by their function and not only their form.. Pro per litigants are to be held to a less stringent standard. See Haines v Kerner; Platsky v CIA; and Aanastasoff v United States.

Plaintiff, Carlos Aguirre all times relevant has been residents of the County of Los Angeles, State of California and is the owner of Real Property, including but not limited to the property at issue herein, 28403 Falcon Crest Dr., Canyon Country, CA. 91351. The Legal descriptions are as follows: **Lot: 57 Tract No: 46626 Abbreviated Description: LOT:57 CITY:REGION/CLUSTER: 01/01146 TR#:46626 TR=46626 LOT 57 City/Muni/Twp: REGION/CLUSTER: 01/01146**

APN: **2812-070-015**

TO ALL PARTIES OF INTEREST:

COMES NOW, Luis Carlos Aguirre, and hereby moves this honorable court to take notice on the unlawful

foreclosure that has been executed, and hereby moves this court for **QUIET TITLE, DECLARATORY RELIEF, DAMAGES and INJUNCTIVE RELIEF** on the basis of **FRAUD**.

- ***The Supreme Court reaffirmed that the right to enjoy private property and not be deprived of it without due process of law in Lynch v. Household Finance Corp.; 405 US 538 (1972).***

Pursuant to my the Deed of Trust (EXHIBIT A) on page 12, paragraph 27 says:

SUBSTITUTION OF TRUSTEE

I agree that LENDER may at any time appoint a successor trustee and that person shall become the Trustee under this Security Instrument as if originally named as Trustee.

Please take notice that the LENDER in my Deed of Trust is WORLD SAVINGS BANK, FSB. (EXHIBIT B) and the Entity who executed the substitution of trustee was DEBORAH SCHWARTS (I believe she is just a ROBO-SIGNER) the Assistant Vice President of WELLS FARGO, NA. and not the LENDER as described on the Deed of Trust.

(EXHIBIT C) this foreclosure is void ab-initio (please see

No. D032454. - DIMOCK v. EMERALD PROPERTIES LLC - CA Court of Appeal**)**

.

This is a fraudulent act by all parties working in concert violating laws and requirements of the NOTE and Deed of Trust.

Page one of the Deed of Trust **(EXHIBIT D)** says;

THIS IS A FIRST DEED OF TRUST WHICH SECURES A NOTE

Unfortunately the NOTE has been sold, again this foreclosure is void ab-initio.

The County Recorders' Office relied upon the Notice of Default and all documents to be true and correct at the time it was presented and filed. This represents a violation of California Penal Code 115.5 and 530 et. Seq. Not only were documents fraudulent notarized, the Assignment of Trustee was done after the Notice of Default was received by Defendant, pursuant to Dimock v. Emerald Properties_Super. Ct. No. 705077_June 21, 2000,… this foreclosure is void. Therefore, the assignment of deed, substitution of trustee, and the deed upon sale are all void ab-initio and cannot be used as evidence in this court. Since Plaintiff has no valid execution of authority by its' false filings at the County and through it's misrepresentations as to whom they represent to this court, the case itself cannot be classified as a "Limited Case" by statue, as a result, Defendant would be harmed in the amount of over $520,000.00

Therefore, Plaintiff must be enjoined from any actions in furtherance of dispossessing Defendant of his property. Cal. Civil Code § 2934a(a)(1)(2) et.seq. clearly states: ***"the trustee under a trust deed upon real property[…] may be substituted by the recording, in the county in which the property is located, of a substitution executed and acknowledged by: (A) all of the beneficiaries under the deed of trust, or their successors in interest…or, (b)the holders of more than 50% of the record beneficial interest of a series of notes secured by the same real property…et seq.*** Since the trustee, Cal-Western Reconveyance Corporation did not follow the law and defrauded / recorded fraudulent documents in the county records and then mailed through the US mail service, is precluded from acting as

trustee and does not have the right to sell or convey property that has been obtained by a criminal act. The actual investors who funded the Original loan must sign individually, under penalty of perjury, to ratify the commencement of this action. Plaintiff, again, lacks standing to bring this matter before this court and cannot ever evidence their constitutional standing, as contemplated in Article III.

PLEASE REMEMBER THAT:

ALL THE FRAUDULENT RECORDINGS BY WELLS FARGO ARE BEING INVESTIGATED BY THE ATTORNEY GENERAL AND THIS CASE WILL NOT BE AN EXEPTION.

The Plaintiff is proceeding as if rights were waived. I have never waived any rights in this matter, knowingly, intelligently or voluntarily, including my right to judicial due process, please see Brady v US; 397 US 742 at 748. In addition, the Northwest Ordinance of 1787, in Article Two, requires that no one can be deprived of liberty or property without due process of law. The Northwest Ordinance is still applicable today in California for the reasons stated previously.

1. On the contrary… I, Luis Carlos Aguirre, offered to pay the balance owed, as soon as WELLS FARGO BANK, NA, Successor by Merger with Wachovia Mortgage, FSB (Formerly World Savings Bank, FSB would provide proof of being the Creditors and Holder-in-Due Course that they claimed to be. (see **EXHIBIT E**), 1 of 3 letters sent by Defendant and ignored by Plaintiff), obviously if no one can prove that they are the Creditors and Holder-in-Due Course, how could they show up and collect?.

WELLS FARGO , NA. DOES NOT HAVE TITLE TO MY PROPERTY, THEY HAVE STOLEN MY TITLE BY FRAUDULENT DOCUMENTATION AND ROBO-SIGNERS WHO DO NAOT HAVE THE POWER TO SIGN OR CONVEY ANYTHING.

Please see **(EXHIBIT F),** the foreclosure examination done by Charles Horner,a forensic

document examiner who found multiple violations in the foreclosure process.

Please see **(EXHIBIT G)**, the loan process that violated the laws of California,RESPA,TILA REG Z, etc.etc..

Please see **(EXHIBIT H),** the affidavit on the foreclosure process from another professional third party on the foreclosure process and Notary process, who found multiple violations.

I, Luis Carlos Aguirre, rely upon Haines v. Kerner, 404 US 519 (1972), pursuant to the limitations imposed upon us and this Tribunal by Article 1 Section(s) 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 15, 18, 19, 21 in particular and all others generally of the Constitution of the State of California (1849 annotated) and the Fifth, Sixth and Seventh Amendments to the Constitution of the United States of America, a……3nd the Northwest Ordinance of 1787 with authority and unalienable right to **answer this complaint as I mention in the complaint, as someone who is the only party in this civil action who has a right, title and interest to the property and object to the Service of the Summons on the following grounds;**

2. I, purchased the subject property in Canyon Country, California. please see page 1 of the Promissory Note,(**Exhibit I), to the subject property**. I refinanced the property on Novenber 8, 2010. The original loan documents for the first NOTE and Deed of Trust were entered into with WORLD SAVINGS BANK, FSB, who subsequently sold the NOTE and Deed of Trust to an undisclosed Third Party NOTE Buyer, who lacked the right of subrogation, as a stranger to the transaction. WORLD SAVINGS BANK, FSB has been in the habit of selling their promissory NOTES within days of receiving the signed promissory NOTES from the borrowers. This also proves that WELLS FARGO BANK, NA is likely not the holder-in-due-course of the NOTE. WACHOVIA MORTGAGE, FSB purchased WORLD SAVINGS BANK, FSB when they were in receivership under the control and direction of the FDIC. It is impossible to determine who has

purchased my loan from WORLD SAVINGS BANK, FSB'S portfolio of loans. The subject property commonly known as 28403 Falcon Crest Drive, California 91351, was later auctioned in an illegal foreclosure sale at which no one was interested to bid (I know, I was present). WELLS FARGO BANK, NA. has refused to respond to my written requests to produce the original NOTE or to show evidence that they are the Creditors, so that I can make an accurate determination regarding who is the true holder-in-course of the NOTE and who is the real party-in-interest. The real party-in-interest is essential as there must be a ratification of commencement and a wet ink original contract between the parties in the case file upon which the above captioned case is commenced pursuant to the Federal Rules of Civil Procedure, Rule 17, and believe that no such ratification has commenced and therefore, I challenge the jurisdiction of the court to make a legal determination in this matter and, I hereby demand proof of claim by ratification of commencement.

3. The steadfast refusal by WELLS FARGO BANK, NA to produce the original NOTE or prove they are the Creditors or at the very least show unbroken chain of title, is confirmation that they are not in possession of the subject NOTE and mortgage, and have sold it to another bank or a mortgage-backed security. If they cannot produce the NOTE, then they do not have it in their possession. WELLS FARGO BANK, NA. who was acting on behalf of an undisclosed Third Party NOTE Buyer, who never had the right of subrogation as a stranger to the transaction and they did so without obtaining a court order from a court of record as required by California Civil Code Section 2924, at the Power of sale clause. The alleged creditor, WELLS FARGO BANK, NA. never recorded the assignment of the Deed of Trust at the county recorders office as required under California Civil Code, Section, 2934.

> (a) (1) The trustee under a trust deed upon real property or an estate for years therein given to secure an obligation to pay money and conferring no other duties upon the trustee than those which are incidental to the exercise of the power of sale therein conferred, may be substituted

by the recording in the county in which the property is located of a **substitution executed and acknowledged by:**
(A) all of the beneficiaries under the trust deed, or their successors in interest, and the substitution shall be effective notwithstanding any contrary provision in any trust deed executed on or after January 1, 1968; or
(B) None of the undersigned is a licensed real estate broker or an affiliate of the broker that is the issuer or servicer of the obligation secured by the deed of trust.
(C) The undersigned together hold more than 50 percent of the record beneficial interest of a series of notes secured by the same real property or of undivided interests in a note secured by real property equivalent to a series transaction.
(D) Notice of the substitution was sent by certified mail, postage prepaid, with return receipt requested to each holder of an interest in the obligation secured by the deed of trust who has not joined in the execution of the substitution or the separate document.
The separate document shall be attached to the substitution and be recorded in the office of the county recorder of each county in which the real property described in the deed of trust is located. Once the document required by this paragraph is recorded, it shall constitute conclusive evidence of compliance with the requirements of this paragraph in favor of substituted trustees acting pursuant to this section, subsequent assignees of the obligation secured by the deed of trust and subsequent bona fide purchasers or encumbrancers for value of the real property described therein.
(4) The substitution shall contain the date of recordation of the trust deed, the name of the trustor, the book and page or instrument number where the trust deed is recorded, and the name of the new trustee. **From the time the substitution is filed for record, the new trustee shall succeed to all the powers, duties, authority, and title granted and delegated to the trustee named in the deed of trust.**

As a result of the foregoing the deed recorded on the subject property by the Plaintiff is just a wild deed and lacks a proper chain of title. Without evidence that a particular creditor is the Holder-In-Due-Course of the NOTE and Deed of Trust or is acting on behalf of the Holder-In-Due Course, there is no evidence before the court that the creditor who claims to have the power to conduct a public auction sale of the subject property, actually has standing to act to sell the subject property.

4. As a result, WELLS FARGO BANK, NA has no TITLE to my property, based upon the foregoing and WELLS FARGO BANK, NA has refused to produce the original NOTE associated with the Deed of Trust, and they are the Creditors, therefore has no standing to enforce that NOTE. The mortgage foreclosure sale occurred without a court order from a court of record as required under California Civil Code Section 2924. Plaintiff failed to obtain a court order from a court of record, filed in their name and on their behalf, giving them the authority to sell the subject property on the court house steps as required under California Civil Code Section 2924. This action for unlawful detainer is, therefore, a fraud upon the court. It appears that the attorneys who filed this case are acting on behalf of WELLS FARGO BANK, NA, who does not have standing, and never had standing, as a stranger to the transaction to foreclose, to hold a foreclosure sale and someone who does not hold the original NOTE and mortgage, and as someone who does not have the right of subrogation. The loan documents were entered into by and between the Defendant, and WORLD SAVINGS BANK, FSB and the action for unlawful detainer is, therefore, a fraud upon the court. An action for **Unlawful Detainer only applies to a lease or rental action, pursuant to the Judicial Council forms used for filing an unlawful detainer case or someone who actually has lawful right, title and interest in the subject property. No effort has been made by the Plaintiff to produce a rental or lease agreement.** The actions that preceded the filing of the unlawful detainer were not, therefore, in accordance with California law, including California Civil Code Section 2932.5 and California Commercial Code Sections 1201(b)(21)(A), 3301, 3305, 3309, 9903 and 9904. The court has never had jurisdiction for the claim filed in this case. This is not a landlord and tenant dispute, and the Plaintiff and their alleged predecessor-in-interest have not met the requirements under California Civil Code Section 2932.5.

Statement of Affirmative Defense and Denial of Allegations contained in the Plaintiffs Complaint.

5. The Plaintiff is not entitled to the possession of the property in spite of the statements in their complaint in all paragraphs. I deny statements made in all paragraphs. The Plaintiff is not entitled to immediate possession of the subject property and the sale of the subject property was not duly made in accordance with California law, and in accordance with California Code of Civil Procedure Section 1161a. The original promissory NOTE was never brought forward by the alleged creditor, WELLS FARGO BANK, NA. The NOTE is thereby a lost NOTE pursuant to California Commercial Code Section 3309, and the requirements have not been met under that provision of law. The alleged creditor, WELLS FARGO BANK, NA is not the holder of the NOTE, since they steadfastly refused to comply with the lawful demand I made to produce the original NOTE under the Real Estate Settlement Procedures Act, Title 12, US Code, Section, 2605 The Fair Debt Collection Practices Act, Title 15, US Code, Section 1692e(2), misrepresenting the Character, amount or the legal status of the debt, and Section 1692e(5), threatening to take actions which cannot lawfully be taken. The Plaintiff has also violated California Commercial Code Section 1201(b)(21)(A), since they have claimed to be the holder of the NOTE without being the actual NOTE holder. They have no standing in court in this matter, because WORLD SAVINGS BANK, FSB is listed as the lender in the NOTE **(Exhibit I).** WORLD SAVINGS BANK, FSB has apparently sold the NOTE and Deed of Trust to an Undisclosed Third Party NOTE buyer. WELLS FARGO BANK, NA is acting as loan servicer without full disclosure of their Principal and NOTE holder. I therefore deny all statements including paragraphs 4, 6, and 7 of the Complaint. I deny statements in Paragraph 8, the Plaintiff is not entitled to any claim of a right, title or interest in the subject property, based upon the foregoing statements and lack of compliance with multiple sections of state and federal law cited previously. There is no evidence that WELLS FARGO BANK, NA is the beneficiary of the promissory NOTE and Deed of Trust and is not the Real Party in Interest, there is no evidence that the NOTE holder,

whoever that is, authorized WELLS FARGO BANK, NA to sell the subject property. The alleged creditor must be the NOTE holder, under California Commercial Code, Section 1201(b)(21)(A) must be in possession of the NOTE and must bring forward the NOTE, in order to enforce the NOTE. I therefore deny all allegations and statements made in paragraph ten and eleven as untrue, based upon the foregoing.

Pursuant to 83 U.S. 271 - Carpenter v. Longan – 1872, the Note and Deed of Trust shall remain together.

6. The Undisclosed Third Party NOTE buyer, does not have the right of subrogation, as a stranger to the transaction and, therefore, had no power or standing to foreclose. There is no admissible evidence that Plaintiff did purchase the property at the trustee's sale and the Plaintiff did not comply with the requirements under Section 2924 of California Civil Code, which is a reflection of the Common Law requirement for due process. Section 2924 of the California Civil Code states that "...a power of sale is conferred upon the mortgagee, a trustee, or any other person, to be exercised after a breach of the obligation for which the Mortgage or transfer is a security, ***the power shall not be exercised except where the mortgage or transfer is made pursuant to an order, judgment, or decree of a court of record."*** (Emphasis Ours); the Plaintiff did not duly record anything of a lawful nature as they allege in their complaint since they did not comply with the requirements under the above cited Code Section, Section 2924 of the California Civil Code, nor did the Plaintiff serve anything of a lawful nature as incorrectly stated in their complaint for unlawful detainer, since they never complied with the above cited provisions of Section 2924 of California Civil Code and Section 2932.5, requiring that the alleged creditor record an assignment of the Deed of Trust; the assertions in the Plaintiffs complaint regarding their alleged compliance with the law is without any foundation in reality, since this request for money is based upon a void civil and administrative process as

described above; these paragraphs are incorrect, they have not complied with the law; the original "sale" of the property was not preceded by a judgment in a Common Law court AKA a court of record, as required under section 2924 of California Civil Code and under the California Constitution, Article VI, therefore none of the lawful requirements were met under California law for a proper foreclosure---Trustee was not yet Trustee when they mailed the NOTICE OF DEFAULT, trustee did not even bother to post the sale notice at a public place as required by law.

I, THEREFORE, DENY ALL OF THE ALLEGATIONS IN THE ABOVE REFERENCED COMPLAINT.

7. I deny all allegations as a matter of law because the Plaintiff does not hold the NOTE and has not produced any tangible evidence that they hold the original NOTE, with wet ink signatures. Furthermore, THE UNDISCLOSED THIRD PARTY NOTE BUYER, DOES NOT HAVE THE RIGHT OF SUBROGATION. I deny all allegations and statements in the complaint, because the Plaintiff did not adhere to or comply with all the provisions of Civil Code Section 2924, which requires an action in a court of law prior to the sale of any property by way of a foreclosure and because the Plaintiff is not a landlord and has not produced a landlord tenant agreement as required on the form used to file this complaint. Additionally, the real-party-in-interest, the UNDISCLOSED THIRD PARTY NOTE BUYER lacks the right of subrogation. Additionally, no admissible evidence has been brought forward to demonstrate that the Plaintiff is the NOTE holder and has standing as the real-party-in-interest. Almost all notes and deeds of trust are sold by the banks within a few days/months of accepting the promissory NOTE and Deed of Trust from the borrower.

8. Therefore, <u>I give the following denial of all of the allegations and statements in the unlawful detainer complaint</u> for the following grounds;

A.) THE RIGHT OF SUBROGATION DOES NOT EXIST FOR A STRANGER TO THE TRANSACTION.

B.) The Plaintiff is not the original lender and, if the Plaintiff is a stranger to the transaction and does not have the right of subrogation as a consequence. The original lender, WORLD SAVINGS BANK, FSB has sold the NOTE to an undisclosed Third Party NOTE buyer, Thus the Plaintiff does not have standing as a stranger to the transaction, Federal Circuit Courts have ruled that the only way to prove the perfection of any security is by actual possession of the security. See Matter of Staff Mortg. & *Inv*. Corp., 550 F.2d 1228 (9th Cir 1977), "Under the Uniform Commercial Code, the only notice sufficient to inform all interested parties that a security interest in instruments has been perfected is actual possession by the secured party, his agent or bailee."

C.) The foreclosing trustee (Cal-Western Reconveyance Corp,) was not assigned as trustee when Defendant received the Notice of Default.

D.**) Defendant believes that the authorized signers of documents were not present when documents were notorized, (signers and notaries are located in different states) and Defendant fears that the authorized signers on notorized documents may not exist or no longer work for Plaintiff and Cal-Western Reconveyance Corp.**

E.) Multiple and serious TILA and RESPA violations on Defendant's loan. Please see **(EXHIBIT G)**

F.) ACCORDING TO THE DEED OF TRUST, I DID AGREE, THAT THE LENDER (WORLD SAVINGS BANK, FSB) **CAN SUBSTITUTE THE TRUSTEE (paragraph 27 on Exhibit A) IT MENTIONS NO OTHER ENTITY AND I DID AGREE ONLY TO THE LENDER, NO OTHER ENTITY.**

9. The Undisclosed Third Party NOTE Buyer does not have the right of subrogation as a stranger to the transaction, and as a result, THE ALLEGED SALE OF THE subject property was unlawful in violation of Section 2924 of California Civil Code as discussed previously. Also an UNDISCLOSED THIRD PARTY NOTE BUYER never had standing to foreclose or hold a foreclosure sale as a stranger to the transaction. THIS COURT SHOULD NOT HAVE ALLOWED A PARTY TO SUE FOR FORECLOSURE WHEN THAT PARTY DOES NOT HAVE STANDING. The original lender is WORLD SAVINGS BANK, FSB. WORLD SAVINGS BANK, FSB sold the NOTE to an Undisclosed Third Party.

The US Supreme Court has ruled consistently that the right of subrogation does not exist for a stranger to the transaction. This principal has been consistent in all of the jurisprudence throughout English and American case law. Please refer to 73 Am Jur Second, Section 90 which states that a right of subrogation does not exist for a stranger to the transaction, a mere volunteer, or some one who has not paid the entire mortgage debt in full. Please review the following for affirmation that the right of subrogation does not exist for any party, as a stranger to the transaction; Henningsen v. United States Fidelity & G. Co.; 208 US 404; 52 L. Ed 547, 28 S. Ct. 389; Prairie State National Bank v. United States; 164 US 227; 41 L. Ed. 412; 17 S. Ct. 142; Aetna L. Ins. Co. v. Middleport; 124 US 534; 31 L. Ed. 537; 8 S. Ct. 625; McBride v. McBride; 148 Or 478, 36 P. 2d 175.

10. The right of subrogation does not exist for the Plaintiff or their assigns, agents, or principals. The assignment of the NOTE and Deed of Trust for my property is unlawful since the assignee was a stranger to the transaction and has not provided evidence that they paid off the entire mortgage debt in full. Most people who work in the mortgage industry will reveal that banks sell promissory notes to each other for pennies on the dollar. They never sell promissory notes for the face value of the NOTE. If the Undisclosed Third Party NOTE Buyer could prove that they paid the entire mortgage

debt in full, they would have included a copy of the cancelled check, evidence of a wire transfer of funds, or some other evidence of the payment of the entire debt in full.

11. The opposing counsel has failed to provide any evidence in this matter of payment of the entire Mortgage debt in full, therefore, under the doctrine of latches, the presumption that the Undisclosed Third Party NOTE Buyer did not pay the entire mortgage debt in full is unrebutted and is therefore a fact undisputed and agreed to by the Defendant. "Subrogation in equity is confined to the relation of principal and surety and guarantors, to cases where a person to protect his own junior lien is compelled to remove one which is superior, and to cases of insurance....Anyone who is under no legal obligation or liability to pay the debt is a stranger, and, if he pays the debt, a mere volunteer.". (emphasis mine) Aetna Life v. Middleport, 124 US 534, quoting Suppiger v. Garrels, 20 Bradwell App Ill. 625. The Undisclosed WELLS FARGO BANK, NA was clearly never a cosigner or surety on the original promissory NOTE. As a result, WELLS FARGO BANK, NA never had the standing to try to sell the subject property at the trustee sale. WELLS FARGO BANK, NA is not a co-signer and does not have the right of subrogation as a stranger to the transaction.

13. WELLS FARGO BANK, NA in this matter has no right of subrogation and hence, they have no standing in court in this matter. In addition, I conclude that the Plaintiff is a stranger to the transaction, did not pay the entire mortgage debt in full and, as a result does not have the right of subrogation or any standing in court to sue in this matter.

THE POWER TO FORECLOSE IN THIS MATTER NEVER EXISTED BECAUSE THE ISSUES WERE NOT ADJUDICATED.

14. The Plaintiff has acted under the presumption of several material misrepresentations of fact as follows; the Plaintiff has acted as if they are a landlord and that they have perfected title to the

property at 28403 Falcon Crest Drive, Canyon Country, California 91351. WORLD SAVINGS BANK, FSB sold the NOTE and Deed of Trust to the subject property to the Undisclosed Third Party NOTE Buyer. As a result, the Plaintiff is neither the landlord, nor the owner of the property and is not the real party-in-interest. This is a prerequisite under FRCP, Section 17(a) for demonstrating that they are the real-party-in-interest and ratified the commencement. They are relying on a process under the California Civil Code §2924, which states in relevant part; "...a power of sale is conferred upon the mortgagee, a trustee, or any other person, to be exercised after a breach of the obligation for which the Mortgage or transfer is a security, ***the power shall not be exercised except where the mortgage or transfer is made pursuant to an order, judgment, or decree of a court of record."*** (Emphasis Ours).

15. The above-mentioned process that is relied upon by the Plaintiff is unconstitutional and violates the organic laws of the United States of America. The Seventh Article of Amendment to our Federal Constitution states:

"In suits at Common Law, where the value in controversy shall exceed twenty dollars, the right to trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the Common Law." On dry land, any action must be adjudicated under Common Law pursuant to the Seventh Amendment; 443 Cans of Frozen Egg Product v. United States of America; 226 US 172 (1912). Furthermore, if the court grants the relief sought by the Plaintiff, it will be an unconstitutional act, denying me due process of law under the Seventh Amendment, see Norton vs. Shelby County;118, US 425 p. 442 and Miranda v. Arizona, 384 U.S. 436 (1966).

DUE PROCESS OF LAW IS PURSUANT TO MAXIMS OF LAW, Defendant invokes Due Process of Law in this case. Accordingly, this Court must adhere to the Maxims of Law as required by the definition of Due Process of Law. All maxims of law, whether listed or not are hereby invoked in this case.

Aside from all else, "due process" means fundamental fairness and substantial justice. *Vaughn v. State, 3 Tenn.Crim.App. 54, 456 S.W.2d 879, 883.*

16. Ex parte Thistleton states that a court of Record is a Common Law Court, see 52 Cal. 220, at 225 (California Supreme Court, 1877).

17. In addition, Common Law jurisdiction and venue is mandated by California statute. As a matter of law, the foundation of the jurisdiction of this case, is established by California Civil Code Section 22.2, which expressly states:

"The Common Law of England so far as it is not repugnant to or inconsistent with the Constitution of the United States, or the Constitution or law of the State of California, shall be the rule of decision in all the Courts of this State."

18. It is settled as a matter of law that when the rules of Common Law are not repugnant to organic or state law, the court cannot ".....adopt a rule other than that established by the common law." Lux v. Haggin, 69 Cal 255, at 261.

19. The California Supreme Court has ruled that " .....where the code is silent, the Common Law governs." Estate of Apple, 66 Cal. 432.

20. I, Luis Carlos Aguirre, the Defendant, hereby declare, as a matter of law, that all twenty-nine (29) divisions of the California code are silent.

WITHOUT DUE PROCESS THE PLAINTIFF CANNOT TAKE THE PROPERTY IN A FORECLOSURE.

21. Pursuant to the Fifth Article of Amendment to our Federal Constitution, the Plaintiff cannot seek to obtain non-judicial remedies, thereby circumventing the due process requirements as

guaranteed under the Fifth Amendment, by way of the Fourteenth Amendment. The Supreme Court also reaffirmed the right to enjoy private property and not be deprived of it without due process of law in Lynch v. Household Finance Corp.; 405 US 538 (1972). The Plaintiff is proceeding as if rights were waived. I have never waived any rights in this matter, knowingly, intelligently or voluntarily, including my right to judicial due process, please see Brady v US; 397 US 742 at 748. In addition, the Northwest Ordinance of 1787, in Article Two, requires that no one can be deprived of liberty or property without due process of law. The Northwest Ordinance is still applicable today in California for the reasons stated previously.

22. Therefore, pursuant to these US Supreme Court rulings neither the Plaintiff nor any other party has any claim to or right, title or interest in my private property. The Plaintiff's adverse fraudulent claims are without any rights whatsoever, without any foundation in law and cannot in any way extinguish my lawful Common Law exclusive claim to my private real property.

23. In this case, I, Luis Carlos Aguirre, the Defendant in this matter, have included a report issued by the House Banking and Currency Committee, "Money Facts", published in 1964, which proves that the Plaintiff will not incur a financial loss or damages if the loan is not paid in full. Please see **Exhibit J,** an authoritative source on the nature of money and banking, with a similar statement about the lack of any out of pocket cost for banks who created new money for the loans they write. The statement in the House Banking and Currency Committee Report is the equivalent of a statement from an expert witness.

24. The Legal Standard in this matter is as follows: The court must view this matter before the court based upon whether or not the parties have provided evidence that proves their assertions. If Plaintiff does not rebut the factual statements in the House Banking and Currency Committee Report, then they have admitted and confessed to the allegations and statements made in said documents. If

the Plaintiff states that they will incur a financial loss or damages or that they actually do pledge their own assets in a transaction or that it does cost them something to create the raw materials they use in a bank loan, then they should have provided evidence of this. All of the above statements about the nature of money and bank loans applies to the original lender as well as any other party claiming to be a holder-in-due-course of the NOTE. The standards in law are as follows; By the Doctrine of Estoppel and by Laches a failure to do something that should be done or to claim or enforce a right at a proper time proves that the party admits to the allegations in **Exhibit J**, see Hutchinson v. Kenny, C.C.A.N.C., 27 F 2d 254, 256; Jett v. Jett, 171 Ky 548, 188 S.W. 669, 672. An element of the doctrine of estopel by laches is that the defendants alleged change of position for the worst must have been as a result of the conduct, misrepresentation or silence of the Plaintiff; Croyle v. Croyle, 184 Md. 126, 40 A. 2d 374, 379; Wisdom Adm'r v.Sims, 284 Ky. 258, 144 S.W. 2d 232, 235, 236; Oak Lawn Cemetery of Baltimore v. Baltimore Com'rs, 174 Md. 356, 198 A. 600, 605, 115 ALR 1478. The Essence of Laches is estoppel, see Burke v. Gunther, 128 N.J. Eq. 565, , 17 A 2d481, 487; Banker's Trust Co. v. Rood, 211 Iowa 289, 233 N.W. 794, 802, 73 A.L.R. 1421; Stewart v. Pelt, 198 Ark. 776, 131 S.W. 2d 644, 648.

25. I was initially misled into believing that WORLD SAVINGS BANK, FSB actually did provide valuable consideration in the bank loans which are the subject of this law suit we realized that they are operating quite differently as a result of extensive reading on the subject, reading such documents as the House Banking and Currency Committee report entitled, "Money Facts", published in 1964, see (**Exhibit J**), Page 24.

26. I, the Defendant, argue that the Plaintiff has not loaned anything of any actual intrinsic value or substance, and never provided any valuable consideration in the bank loan, which is the subject of the law suit. Evidence is presented from the House Banking and Currency Committee by us, which is

unrebutted by the Plaintiff. The report states as follows, "Now the cost of creating money is negligible. Congress has delegated the power to create money to the banking system without a charge. The Banks do not pay a license fee or a payment charge for their reserves. ***Thus the raw materials the banks use cost them nothing.***" (Emphasis added.) This document supplies incontrovertible evidence that the banks pay nothing for the raw materials, circulating currency which they use, as a result they do not incur a financial loss or any actual damages when the an alleged mortgage debt is not paid. If the Plaintiff has not rebutted the statements in my affidavit or the House Banking and Currency Committee Report, therefore it stands as law in the case and must be viewed as the truth and the law. In the absence of any evidence to the contrary it is established, by these pleadings, that the Plaintiff, a bank, has created their "raw materials" without any cost and without incurring any financial loss as a result of the loan not being paid, because there is no valuable consideration. The element of fraud is proven because the Plaintiff expects to be paid for "loan" of currency which is not valuable consideration because the "lender" did not pledge any of their own assets by their own confession, or failure to rebut the affidavit, which is interpreted as a confession see the House Banking and Currency Committee Report, (**Exhibit J**), Page 24.

27. If the Plaintiff never rebuts the affidavit with actual evidence or an affidavit from an expert witness, they thereby agree to and stipulate to all issues of law and jurisdiction contained in it, and agree that they cannot prove that they actually loaned something of value, that is provided something of valuable consideration or that the raw materials the banks use cost them something. The Plaintiff also agrees and confesses that WORLD SAVINGS BANK, FSB sold the NOTE to an Undisclosed Third Party NOTE Buyer, as a stranger. By the Doctrine of Estoppel and by Laches a failure to do something that should be done or to claim or enforce a right at a proper time proves that the party admits to the allegations in (**Exhibit J**), see Hutchinson v. Kenny, C.C.A.N.C., 27 F 2d 254, 256; Jett

v. Jett, 171 Ky 548, 188 S.W. 669, 672. An element of the doctrine of estopel by laches is that the defendants alleged change of position for the worst must have been as a result of the conduct, misrepresentation or silence of the Plaintiff; Croyle v. Croyle, 184 Md. 126, 40 A. 2d 374, 379; Wisdom Adm'r v.Sims, 284 Ky. 258, 144 S.W. 2d 232, 235, 236; Oak Lawn Cemetery of Baltimore v. Baltimore Com'rs, 174 Md. 356, 198 A. 600, 605, 115 ALR 1478. The Essence of Laches is estoppel, see Burke v. Gunther, 128 N.J. Eq. 565, , 17 A 2d481, 487; Banker's Trust Co. v. Rood, 211 Iowa 289, 233 N.W. 794, 802, 73 A.L.R. 1421; Stewart v. Pelt, 198 Ark. 776, 131 S.W. 2d 644, 648.

28. *Affidavits and facts, which are uncontroverted have been relied upon in rulings to issue a decision in favor of the persons who have submitted an affidavit, facts or expert testimony which is uncontroverted, see Tiedemann v. Radiation Therapy Consultants, P.C. 299 Ore 238 (1985). The House Banking and Currency Committee report which is cited in this case is of a character which is the equivalent of expert testimony, since the committee is considered to have an expert working knowledge of the subject matter and has held thousands of hours of hearings on the subject of money and banking. They have called many expert witnesses to these hearings. See also Guz v. Bechtel Nat., Inc., 242 cal 4th 317; 8 P. 3d 1089; 100 Cal Rptr 2d 352, in which a California appeals court ruled that unrebutted evidence supplied by the Defendant provided the foundation for a summary judgment in favor of the Defendant.*

A PARTY ALLEGING TO BE A CREDITOR MUST PROVE STANDING.

29. The Plaintiff has failed or refused to produce the actual NOTE, which they allege that I, Luis Carlos Aguirre, the Defendant, owe. Where the lender cannot prove the existence of the NOTE, then there is no NOTE. The original NOTE must be produced, not a copy. To recover on a promissory NOTE, the plaintiff must prove: (1) the existence of the NOTE in question; (2) that the party sued or

alleged debtor signed the NOTE; (3) that the lender is the owner or holder of the NOTE; and (4) that a certain balance is due and owing on the NOTE. See In Re: SMS Financial LLC. v. Abco Homes, Inc. . No.98-50117 February 18, 1999 (5th Circuit Court of Appeals.) Volume 29 of the New Jersey Practice Series, Chapter 10 Section 123, page 566, emphatically states, " ...; and no part payments should be made on the bond or NOTE unless the person to whom payment is made is able to produce the bond or NOTE and the part payments are endorsed thereon. It would seem that the mortgagor would normally have a Common Law right to demand production or surrender of the bond or NOTE and mortgage, as the case may be. See Restatement, Contracts S 170(3), (4) (1932); C.J.S. Mortgages S 469 in Carnegie Bank v Shalleck ; 256 N.J. Super 23 (App. Div 1992), the Appellate Division held, "When the underlying mortgage is evidenced by an instrument meeting the criteria for negotiability set forth in N.J.S. 12A:3-104, the holder of the instrument shall be afforded all the rights and protections provided a holder in due course pursuant to N.J.S. 12A:3-302" Since no one is able to produce the "instrument" there is no competent evidence before the Court that any party is the holder of the alleged NOTE or the true holder in due course. Federal and Circuit Courts have ruled that the only way to prove the perfection of any security is by actual possession of the security. See Matter of Staff Mortg. & Inv. Corp., 550 F. 2d 1228 (9th Cir 1977), "*Under the Uniform Commercial Code, the only notice sufficient to inform all interested parties that a security interest in instruments has been perfected is actual possession by the secured party, his agent or bailee.*" (Emphasis added.) The Ninth Circuit Court of Appeals has affirmed this decision at least six times. Bankruptcy Courts have followed the Uniform Commercial Code. In Re Investors & Lenders, Ltd. 165 B.R. 389 (Bkrtcy.D.N.J.1994

30. After reviewing the case law it appears that the Plaintiff has a duty to present an original promissory NOTE pursuant to the following; in Braswell v. Tindall, 200 Tenn 629, 294 S.W. 2d 685

(Tennessee Supreme Court, 1956), the Court held that where no evidence was in the record and where there was no testimony from the holder of an alleged NOTE demonstrating that the alleged holder of the NOTE was the holder in due course of a NOTE, the holder fails completely and therefore must have judgment entered against him.

31. A second case from the Tennessee Court of Appeals, Cited as The Cadle Company v. Singleton, 851 S.W. 2d 814 (Tennessee Court of Appeals, 1992) appears to make a more direct statement about the absolute requirement that the alleged creditor bring forward an original promissory NOTE. In clear and unmistakable language the court states unequivocally that the NOTE is an essential element to the proof of the Creditors claim as follows "But, more critical to the appellants case is the fact that neither the NOTE on which this suit is based nor the affidavit which allegedly traces the NOTE through the FDIC to the appellant appears in the "statement of the case." The court ruled against the alleged creditor because he did not bring forward into evidence the original NOTE.

32. I, Luis Carlos Aguirre, furthermore, cite the following case law to provide additional support for the notion that an original promissory NOTE is an essential element to a creditors claim; See Russell v. Bondie, 51 Mich 76, 16 N.W. 239 (1883); Trombly v. Trombly, 106 Mich 227, 64 N.W. 56 (1895); Rose v. Jackson, 40 Mich 29 (1879). The existence or lack of existence of the promissory NOTE establishes a Common Law right of the parties to either collect a debt or deny the validity of a debt, as part of the due process rights of the parties. In addition, UCC 1-201(20), UCC 9-304, and 9-305 requires the lender to be in possession of the NOTE when they foreclose. Any failure or refusal to produce the original NOTE is a violation of the hearsay rule, where we are expected to "trust the lender" when they assert that they have standing, although they have produced no material evidence that they are the holder-in-due-course of the NOTE. I, the Defendant sent the Plaintiff a qualified

written request, under RESPA, Title 12 U.S.C., Section 2605(e) demanding production of the NOTE and accounting records and the request was ignored and refused by the Plaintiff, **proving only a copy but refused to provide a certified copy of the NOTE because they sold it.**

33. On eight different occasions the Ninth Circuit Court of Appeals has ruled that the only way to perfect a security interest in a debt obligation is by possession of the NOTE, please see In re Matter of Staff Mortg. & Inv. Co., 550 F. 2d 1228, (Ninth Cir. 1977); Bear v. Coben, (In re Golden Plan of Ca., Inc) 829 F. 2d 705(Ninth Cir. 1986); and In re Bruce Farley Corp., 612 F. 1197 (Ninth Cir. 1980). Similar rulings were handed down by the Sixth Circuit Court of appeals, see Motobecane America, Ltd v. Patrick Petroleum, Co., 791 F. 2d 1248, (Sixth Cir., 1986); In re Maryville Sav. & Loan, Corp., 743 F 2d 413 (Sixth Cir. 1984). The Eighth Circuit Court of Appeals issued a similar ruling, see In re Holiday Intervals, Inc., 931 F. 2d 500, (Eighth Cir. 1991).

34. A growing number of federal judges in California, Ohio and elsewhere have recently compelled the banks to produce the NOTE and produce evidence that they are the holder-in-due-course of the NOTE as a condition to a foreclosure, they are also requiring to prove the chain of title. With respect to the rules of evidence, the creditor must show that they are the holder with evidence that does not violate the hearsay rule, *as discussed in a bankruptcy case in California*, which involved a NOTE and Deed of Trust, see In re Vargas, 396 B.R. 511, at 517-519 (Bankr. C.D. Cal 2008). Furthermore, it was also ruled in another bankruptcy case, that the servicing agent does not have standing to enforce the NOTE, see In re Hwang, 396 B.R. 757, (Bankr. C.D. Cal. 2008). See Deutsche Bank Nat'l Trust Co. v. Steele, 2008 WL 111227 (S.D. Ohio, January 8, 2008, in which the federal judge ordered Deutsche Bank to produce evidence that they are the holder of the NOTE. See also In re Foreclosure Cases, 521 F Supp. 2d 653, (S.D. Ohio, 2007), in which the federal judge stated that the creditor must show standing as follows: "[I]n a foreclosure action, the Plaintiff must

show that it is the holder of the NOTE and the mortgage at the time that the complaint was filed." For similar decisions in bankruptcy cases see also In re Hayes, 393 B.R. 259 (Bankr. Mass. 2008), Nosek v. Ameriquest (In re Nosek), 286 Br. 374 (Bankr D. Mass. 2008) in which it was revealed that Ameriquest was not the holder of the NOTE and mortgage, but only the servicer. The law firm representing Ameriquest was fined $ 100,000.00 by the judge for making material misrepresentations to the court about their clients status. See also In re Schwartz, 366 B.R. 265 (Bankr. D. Mass. 2007) in which there was no evidence presented identifying the actual holder of the NOTE.

35. The servicing agent may have standing if acting as an agent for the holder, assuming that the agent can both show agency status and that the principle is the holder. In re Vargas, 396 B.R. 511 (Bankr. C.D. Cal. 2008) at 520.

…"Only the Holder of the NOTE is the "Real Party in Interest."….The right to enforce the mortgage on behalf of the NOTE holder does not, however, render the NOTE holder's agent into the real party in interest. "As a general rule, a person who is an attorney-in-fact or an agent solely for the purpose of bringing suit is viewed as a nominal rather than a real party in interest and will be required to litigate in the name of his principal rather than in his own name." Wright & Miller, 6A Federal Practice & Procedure Civ. 2d § 1553.

36. "Consequently, even if a court finds that a proper agency relationship exists between the holder of a NOTE and the party seeking to enforce its security, this does not excuse the agent from the requirement that an action be prosecuted in the name of the NOTE holder, who is the real party in interest. Fed.R.Civ.P. 17(a) (1)". In re Hwang, 396 B.R. 757 (Bankr. C.D. Cal. Sept. 2008). The alleged NOTE holder has not met the requirements under the Federal Rules of Civil Procedure Rule 17(a) to establish that they are the real party-in-interest, and therefore, they have no standing. There is no present right of possession of the subject property by the Defendants, because they not met the

threshold requirements for enforcing the NOTE under Uniform Commercial Code as discussed above. Therefore, the Plaintiff has no right to possession of the subject property, for failure to bring forward any material evidence that they are connected in any way to the NOTE and failure to prove they are anything other than a stranger to the transaction, and thus they have never had standing to enforce the NOTE and mortgage.

37. "Standing and the real-party-in-interest requirements are related. Standing encompasses both constitutional and prudential elements. See, e.g., Warth v. Seldin, 422 U.S. 490, 498-99 (1975); In re Simplot, 2007 WL 2479664, at *9 (Bankr. D. Idaho. Aug. 28, 2007). To have constitutional standing, the litigant must allege an "injury that is concrete, particularized, and actual or imminent; fairly traceable to the defendant's challenged behavior; and likely to be redressed by a favorable ruling." Davis v. Fed. Election Comm'n, U.S. 128 S. Ct. 2759, 2768 (2008). Prudential standing includes the idea that the injured party must assert its own claims, rather than another's. See, e.g., Warth, 422 U.S. at 499. Thus, the real-party-in-interest doctrine generally falls within the prudential standing doctrine." See In RE: LAVERL H. WILHELM, Case No. 08-20577-TLM.

38. The Bankruptcy Court in In Re LAVERL H. WILHELM, supra stated: **"To resolve the standing and real-party-in-interest issues presented here, the Court must determine who has the right to enforce the NOTE. Because bankruptcy law does not provide for enforcement of promissory NOTES, the Court looks to applicable non-bankruptcy law.** See generally Butner v. United States, 440 U.S. 48, 54-55 (1979) (nature and extent of property interests in bankruptcy are determined by applicable state law)." The court in the above case also concluded that the mortgage creditors in this case did not have standing to bring a motion for relief from stay because they could not bring forward a NOTE with an endorsement stamp, showing that the NOTE was endorsed in their name. The court stated further: **"The "holder" option is not available to Movants; the NOTE is**

none payable to the Movant and the NOTE has not been indorsed, either in blank or specifically to a Movant. See id.; Idaho Code § 28-3-205 (regarding special and blank indorsements).”……. **“To qualify as holders, these Movants must possess an indorsed NOTE.**

39. It is important to understand what the Uniform Commercial Code requires of an alleged secured party. UCC 1-201(b)(21)(A) places an absolute requirement on those claiming to be a creditor to be in possession of the instrument that obligates the debtor. Section UCC 1-201(b)(21)(A) and the equivalent under California law.

40. Uniform Commercial Code 1-201(b) (21)(A) "Holder," means:

(A) the person in possession of a negotiable instrument that is payable either to bearer or, **to an identified person that is the person in possession**; or (Emphasis Added.)

41. UCC 9-904 is also a provision that emphasizes possession of the NOTE as a condition precedent to the enforcement of the NOTE by the alleged creditor.

42. Those currently claiming to be the holder-in-due course on the NOTE have obviously sold the original NOTE and failed to give credit to the account. The right to compel the Plaintiff to produce the NOTE is a Common Law right to prevent fraud, deception, and ensure honest dealings amongst the lenders. In addition, the serial transfers of mortgages and NOTES, along with sloppy record keeping makes it necessary to ensure that the actual creditor is the holder of the NOTE and not someone else.

43. The Plaintiff has failed or refused to produce the actual NOTE, which the Plaintiff allege that I owe. Where the foreclosing party cannot prove the existence of the NOTE, then there is no NOTE, see UCC 3-309.

44. Banking transactions have consistently been governed by the Uniform Commercial Code, since the early days of the code's existence. It is clearly settled that the Uniform Commercial Code has applied to all banking transactions including those involving real property. If the original NOTE cannot be produced then it is obvious that the original NOTE has been sold to a third party without disclosure of this fact to the borrower or it has been lost. If this is true, then the Defendants do not have standing to foreclose and they are committing fraud by their failure to disclose this fact and their actions to present themselves as the holders-in-due course of the NOTE. Additionally, if the NOTE is held by someone else, such as a mortgage backed security then the foreclosure should be conducted by someone who has possession of the NOTE.

45. **Title 12 US Code, Section 248 and 347, require the 2046 balance sheet as it relates to the ledgering of the original loan account and will show extinguishment of the loan, and this must be filed pursuant to Title 12 USC, Sections 248 and 347. Form S 3, is a registration statement filed with the SEC and must be filed whenever the original NOTE is sold. The SEC also requires the filing of a Form 424 B-5 Prospectus, which also shows the bundling of NOTES for delivery into a REMIC (Real Estate Mortgage Investment Conduit). See also IRS Publication 938.** The Financial Accounting Standards Board has established standards for accounting regarding TES0, including FAS 125, 133, 140, 5 and 95, which will show the liability side of the bank's books and will create a trail of exactly where the money came from and where it went and will confirm, in discovery, the legal theory advanced in this case. Title 12, USC Section 1813 (L)(1) states that when the bank deposits a promissory NOTE it becomes a cash item to the bank and is ledgered as an asset on their books, and the bank was supposed to provide a receipt for it, which was not done. The banks bundle, securitize and sell the NOTES to a REMIC, often without disclosure to the borrower. The above facts are part of the reason why the "lender" cannot produce the original NOTE.

46. No material evidence is before the court regarding who is the holder of the NOTE and that the Plaintiff is the NOTE holder.

EVEN IN A DEFAULT JUDGMENT, DAMAGES MUST BE PROVED.

47. Even with a default judgment, DAMAGES MUST BE PROVED BY EVIDENCE ENTERED ON THE RECORD. For example, see American Red Cross v. Community Blood Center of the Ozarks, 257 F.3d 859 (8 th Cir. 07/25/2001).

48. When jurisdiction is challenged, the party claiming that the court has jurisdiction has the legal burden to prove that jurisdiction was conferred upon the court through the proper procedure. Otherwise, the court is without jurisdiction.

49. ***It has already been well established by the evidence in this case that the Plaintiff does not have standing to sue because they never had standing to foreclose and are not the real party-in-interest.*** Whenever a party denies that the court has subject-matter jurisdiction, it becomes the duty and the burden of the party claiming that the court has subject matter jurisdiction to provide evidence from the record of the case that the court holds subject-matter jurisdiction. Bindell v City of Harvey, 212 Ill.App.3d 1042, 571 N.E.2d 1017 (1st Dist. 1991) ("the burden of proving jurisdiction rests upon the party asserting it."). Until the plaintiff submits uncontroversial evidence of subject-matter jurisdiction to the court that the court has subject-matter jurisdiction, the court is proceeding without subject-matter jurisdiction. Loos v American Energy Savers, Inc, 168 Ill.App.3d 558, 522 N.E.2d 841(1988)("Where jurisdiction is contested, the burden of establishing it rests upon the plaintiff."). The law places the duty and burden of subject-matter jurisdiction upon the plaintiff. Should the court attempt to place the burden upon the defendant, the court has acted against the law, violates the defendant's due process rights, and the judge has immediately lost subject-matter jurisdiction.

50. I seek a determination by this court that the Plaintiff cannot produce from the record, both the

offer of presentment of the original promissory NOTE giving rise to our alleged obligation to The Plaintiff and the account and general ledger statement showing all receipts and disbursement on the alleged defaulted loan signed and dated by the auditor who prepared the account and general ledger statement requires dismissal of this matter, as a matter of law together with whatever other damages and relief this court may find reasonable, lawful, and just. To prove up a claim of damages, the foreclosing party must enter evidence incorporating records such as a general ledger and accounting of an alleged unpaid promissory NOTE, the person responsible for preparing and maintaining the account general ledger must provide a complete accounting which must be sworn to and dated by the person who maintained the ledger. See Pacific Concrete F.C.U. V. Kauanoe, 62 Haw.334, 614 P.2d 936 (1980), GE Capital Hawaii, Inc. v. Yonenaka 25 P.3d 807,96 Hawaii 32, (Hawaii App 2001), Fooks v. Norwich Housing Authority; 28 Conn.L. Rptr. 371, (Conn. Super.2000), and Town of Brookfield v. Candlewood Shores Estates, Inc.; 513 A.2d 1218, 201 Conn.1 (1986). See also Solon v. Godbole; 163 Ill. App. 3d 845, 114 Il.

51. The Plaintiffs service of summons, and action against me must be abated, and by the court and in the interest of justice for all of the foregoing reasons. I hereby move this court to abate the service of summons and abate this entire matter in the interest of justice.

Statements of Counsel in Brief or in Oral Argument are not Fact Before the Court

52. Unsworn statements by counsel cannot be considered by the trial court.

53. As the courts have said of other unsworn statements which were not part of the record and therefore could not be considered by the court: “Manefestly [such statements] cannot be properly considered by anyone as in the disposition of [a]case.”Adickes v. Kress & Co. 398 US 144, 157-158,n.16.

PRAYER

I, Luis Carlos Aguirre pray for justice and that this Court does not allow the Plaintiff and Representatives to break the law and to keep them from disrespecting this Court by coming in with UNCLEAN HANDS.

Finally, I pray that this Court conveys our home back to my family.

Respectfully Submitted,

Luis Carlos Aguirre_____

Verification

In Witness, Whereof, Knowing the law of bearing false witness before God and Men, I Solemnly aver *that this COMPLAINT for QUIET TITLE AND LIS PENDENS* is presented to the Plaintiff in good faith and is not interposed for the purpose of delay or any other purpose with which we have herein stated and declared.

That I have further read the *Answer to Complaint for Unlawful Detainer* and know the contents thereof to be true; and the same is true of my own knowledge, except to the matters which are therein stated on my information and belief, and as to those matters I believe them to be true. The foregoing is true, complete, correct, complete and not misleading.
Sealed by the voluntary act of Our own hand on this November 1st, in the Year of our Lord, two thousand and ten, in the fourth century of the Independence of America.

_____
Luis Carlos Aguirre

Luis Carlos Aguirre a/k/a
Carlos Aguirre,
28403 Falcon Crest Drive
Canyon Country,
California 91351
Cell No. (661) 414-2866

DECLARATION OF SERVICE BY MAIL

I, CLAUDIO AGUIRRE, declare as follows:

That I am domiciled in LOS ANGELES county, I am over the age of eighteen years old and not a party to the within action. My mailing location is:

28174 LANGSIDE BLVD. CANYON COUNTRY, CALIFORNIA 91351

On November 1st in the year of our Lord Two thousand and ten,
I served by mail a true copy of *COMPLAINT for QUIET TITLE AND LIS PENDENS* for Case number: NOT YET ASSIGNED in the District Court of California, in and for Los Angeles
County, County of Los Angeles District Court, upon the office of KENNETH A. FREEDMAN, A PROFESSIONAL CORPORATION, agents for the Plaintiff.

KENNETH A. FREEDMAN
4165 Thousand Oaks Blvd., Suite 101
Westlake Village, California 91362

WELLS FARGO BANK, NA
420 MONTGOMERY STREET
San Francisco, California 94102

I declare under penalty of the Common Law of California that the foregoing is true and correct. Executed on November 8st, in the year of our Lord two -thousand and ten.

By:_____
CLAUDIO AGUIRRE
Notice to the Principal is Notice to the Agent-
Notice to the Agent is Notice to the Principal