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**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA BARBARA

FEB 01 2012

GARY M. BLAIR, Executive Officer  
BY *John Vazquez*  
JACKIE VAZQUEZ, Deputy Clerk

Attorney for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SANTA BARBARA (ANACAPA DIVISION)

DAVID W. GATES, Trustee for the DAVID W. GATES

Trust dated August 5, 1996 Plaintiff,

vs.

MGC Mortgage, Inc., Texas Corporation

LPP Mortgage Ltd., LP, Texas Corporation

Loan Acquisition Corporation, Texas Corporation

Cal-Western Reconveyance Corporation, Texas Corporation

DB Structured Products, Inc., Delaware Corporation

Deutsche Bank National Trust Company, as trustee

Washington Mutual Bank, a national banking association

Wamu Asset Acceptance Corporation, SPV vehicle bank

Washington Mutual Mortgage Securities Corporation, bank

JP Morgan Chase Bank., National Association, a bank

DOES 1 through 50, inclusive, Defendants.

Case No:

1384851

VERIFIED COMPLAINT

for

DECLARATORY & INJUNCTIVE RELIEF

(WRONGFUL FORECLOSURE)

SLANDER OF TITLE & CONSPIRACY TO SLANDER

FRAUD (misrepresentation and concealment)

QUASI-CONTRACT (restitution)

ELDER ABUSE Welfare & Institutions Code §15610.10

BREACH OF FIDUCIARY DUTY (constructive fraud)

QUIET TITLE (declaratory relief)

CONTRACT RESCISSION

COMMON LAW ACCOUNTING

Request for Attorney Fees W&I. §15657; CCP §1021.5

Civil Code §1717

DEMAND FOR JURY TRIAL AS ALLOWED BY LAW

Filed with Motion for Temporary Injunction against  
foreclosure set for 2-6-2011 and request for hearing on  
preliminary injunction pending outcome of litigation

Plaintiff respectfully asks the court to study **EXHIBIT C** before reading this complaint as securitization of  
a mortgage into a "Pool of Loans" to be marketed/sold as Residential Mortgage Backed Securities (RMBS) and  
Collateralized Debt Obligations (CDO's) on Wall Street is very difficult to understand without broker training.  
Plaintiff's loan was securitized on 9-29-05. Background allegations are imperative for the court's understanding.

## INTRODUCTION

1. Plaintiff brings this action against defendants and Does 1-50 for trying to sell his Property at a trustee's sale set for February 6, 2012 which will deprive Plaintiff of his property without a lawful claim. Plaintiff seeks to clear his title and recover damages for the malicious and intentional acts of fraud against plaintiff. Defendant LPP Mortgage Ltd., (LPP) does not have standing to foreclose because LPP is not the owner of plaintiff's Note, LPP is not a holder of the Note, and LPP is not a beneficiary under the Note. LPP does not claim, nor has it ever claimed to be the owner or holder of the Note, nor can LPP claim to be a beneficiary.
2. LPP is merely named as a contact in the Notice of Default. Even if LPP could prove that it is a loan servicer, LPP still could not foreclose on plaintiff's property without authorization from the Lender under Paragraph 22 of plaintiff's Deed of Trust.(see Exh. A-25) LPP has no standing to foreclose and had no power to substitute a trustee. Paragraph 24 of the deed of trust recites that only the lender may substitute. CWRC has no power to foreclose as its agency power is derived and thus limited by it's principal's power.
3. Furthermore defendant CWRC failed to comply with the provisions of CCP §2924 governing foreclosure. Plaintiff's loan was originated on September 25, 2005. No foreclosure could be prosecuted without first contacting the borrower to try to work out a loan modification. CCP §2923.5 No defendant ever complied. Secondly, the trustee was required to wait until the substitution of trustee was recorded before recording a notice of default. The trustee failed to follow the strict requirements of the code; accordingly the court must restrain this illegal foreclosure. Defendants failed to identify the beneficiary as mandated by 15 USC §1641g. The notice recites the trustee is "*either the original trustee, the duly appointed substituted trustee, or acting as agent for the trustee or beneficiary under a deed of trust.*" This nebulous recitation woefully fails to comply. Since trustee failed to comply with basic requirements under CCP §2924 et seq. foreclosure is void *ab initio*.
4. Notwithstanding the procedural deficiencies of the trustee and substantive deficiencies in that LPP has no standing to foreclose because it has no legal or beneficial interest in the Note obligation, the foreclosure is void *ab initio* as it is based on fraudulently manufactured instruments which were likely forged. (**see Exh. M**). The questioned instruments must be examined for validity and should not be automatically accepted as valid.

**NOTE:** Some defendants were/are doing business illegally without registering at the Secretary of State's office.

**Plaintiff will object to participation of any defendant until first curing their deficiency with the SOS.**

The state of California needs the funds. These banksters have evaded registering to avoid paying our state.

## HISTORICAL ALLEGATIONS

### PARTIES:

5. Plaintiff DAVID W. GATES, (hereinafter GATES) is a resident of Santa Barbara and brings this action as Trustee for DAVID W. GATES TRUST dated August 5, 1996 which owns real property at 1200 Palomino Road, Santa Barbara, CA, the subject of this action. (see Exh. A–Valid Chain of Title). The foreclosure is illegal and void *ab initio* because it is based upon fraudulent and possibly forged instruments recorded against the property which purports to assign the trust deed, violating Penal Code §115,132-135. (Exh. B 1 to B 4)
6. The assignment was recorded by a corporation (LPP) having no legal or beneficial interest in the property. Only a real party in interest may prosecute an action. GATES executed a note and a trust deed (Exh.A-5,A11) to Washington Mutual Bank, FN on 9-25-2005. The trust deed was void *ab initio* because Washington Mutual Bank FN was defunct by 4-25-2005 and thus had no power to transfer anything on 9-25-05.
7. GATES is a 69 year-old widower who has been disabled since age 45. GATES wife of 20 years died of anorexia on 11-19-08 and his home of 30 years burned down in the Jesusita fire in Santa Barbara on 5-6-09. The stress of losing his wife and then his home was too much to bear causing heart problems necessitating heart surgery. Friends and volunteers helped GATES to rebuild in the past 3 years which is 80% finished. LPP (the pretend lender) tried to convert GATES’s fire insurance proceeds which forms the basis for the fraud claim and the financial elder abuse claim. At all relevant times GATES was/is disabled and a senior citizen as defined under Civil C. §1761. GATES is afforded protection from financial abuse. W&I Code §15610.27
8. Defendant MGC Mortgage, Inc. (MGC) is a Texas corporation doing business in California, who since July 1, 2009 has held itself out to be the “loan servicer” acting on behalf of the *pretend lender*. (Exh. F-3)
9. Defendant LPP Mortgage, Inc. (LLP) is a Texas corporation who at all relevant times since August 22, 2008 has falsely represented itself to be the *lender* and *assignee* of the recorded trust deed. (Exh. B-1)
10. Defendant Loan Acquisition Corporation (LAC) is a Texas corporation who since August 22, 2008 has falsely represented itself as a party to a purported “Master Loan Sale and Interim Servicing Agreement” (“the purchase agreement”) together with “DB Structured Products, Inc.” (Exh. B-3)
11. Defendant Cal-Western Reconveyance Corporation (CWRC) is a Texas corporation doing business in California as a foreclosure mill working for various lenders (real lenders and pretend lenders). CWRC is vigorously pursuing a fraudulent foreclosure despite warnings and demands to cease and desist from same.

12. CWRC noticed a sale for 1200 Palomino on February 6, 2012 despite notice of the fraud. (Exh. B-13)

\*\* CWRC is so cavalier in its fraudclosure campaign that it often ignores restraining orders issued by courts.

13. Defendant Deutsche Bank National Trust Company (DB) was/is the current trustee for a large “Pool of Loans” (RMBS’s) which includes GATES’ loan after it was conveyed into the trust by the loan’s originator.

14. Defendant Washington Mutual Bank (WMB) is a national banking association which, through affiliates, subsidiaries, agents, securities dealers and brokers, packaged thousands of residential mortgage loans from 2001 to 2008 into *Pools of Loans* converted into securities and marketed/sold to investors on Wall Street.

This **securitization** of residential loans through “Pooling and Servicing Agreements” is explained at Exh. C.

15. Defendant WaMu Asset Acceptance Corporation (WAAC) was a “special purpose vehicle” (SPV) created by WMB and authorized by the Tax Reform Act of 1986 to act as a Real Estate Mortgage Investment Conduit (REMIC) to issue tax-free *passthroughs* in securitizing a mortgage into *certificates* sold to investors as bonds.

16. Defendant WaMu Mutual Mortgage Securities Corporation (WMMSC) is an affiliate of WMB who, on information and belief, was involved in transmuting GATES’ loan into a residential mortgage backed security (RMBS) and who worked on his loan package during the so-called underwriting of GATES’ loan.

17. Defendant JP Morgan Chase Bank, National Association (CHASE) is the bank who acquired the assets and liabilities of Wamu Bank on September 25, 2008 for 1.9 billion dollars. The FDIC-appointed receiver worked the deal with CHASE after the Office of Thrift Supervision seized it. Wamu file Ch. 11 bankruptcy.

#### DOES:

18. Plaintiff is ignorant of the names of those Defendants sued as Does 1-50, and for that reason has sued them by said fictitious names. Plaintiff will seek leave of the court to amend this complaint to add the names when they have been ascertained. Plaintiff believes the DOES are liable for their acts/omissions as alleged or are in some way liable to GATES for damages, or claim a beneficial interest, title or estate in his property.

#### AGENCY:

19. In doing the acts alleged, defendants and each of them acted as either agents, servants, and/or employees of their co-defendants, acting within the course and scope of said agency, service and/or employment, and with the knowledge, consent, and approval of their co-defendants; each defendant’s conduct was ratified by his or her co-defendants, and each defendant acted in a conspiracy to defraud consumers including GATES.

## GENERAL BACKGROUND ALLEGATIONS

20. After the Great Depression of 1934, as part of the New Deal our government enacted the National Housing Act of 1934 to revive the economy and encourage Americans to work toward home ownership. The government continued this pattern by creating Fannie Mae, Freddie Mac, Ginnie May, FHA, etc. Congress passed the Tax Reform Act of 1986 in which it created Real Estate Mortgage Investment Conduits (REMIC's) to encourage loan originations through a process called *securitization*. Prior to 1986 a bank lent a customer funds (from deposits) and held the *note* in a *portfolio* until paid. Upon default the bank foreclosed.
21. The process of *securitization* is more complicated. **Exhibit C** is a flow chart summarizing how it works with a few pages describing its history, its process, its participants and the dangers of losing its tax-free status. *Securitization* involves the creation and sale of securities (RMBS certificates) backed by an underlying pool of thousands of collateralized mortgages held in a trust created for such purpose. The financial institution sponsoring the *securitization* originates or acquires mortgages; it then assigns the notes (as "seller") which are transferred into the REMIC trust, often through a special purpose vehicle (SPV) typically called the *depositor*. The trust then issues different classes of securities and sells them to investors in the form of *certificates*. Each *certificate* entitles the investor to periodic disbursements from the cash flow available in the REMIC trust from monthly payments made on the underlying mortgages, which are allocated to that class of security in accordance with governing rules of the trust. The trustee manages trust assets and ensures distribution of trust funds to investors in accordance with a governing document called "*Pooling and Servicing Agreement*" (P&S) signed by the parties. The P&S is a tax-free statutory trust and IRS codes must be strictly followed to avoid losing its tax-free status. REMIC's are governed very strictly by Internal Revenue Code §860(d).
22. The Chart at **Exhibit D** shows who the participants were in the GATES loan and includes what GATES believes is the P&S governing his loan. "WaMu Mortgage Pass-Through Certificates, Series 2005 AR-13." Although defendants have refused to provide GATES's P&S he believes this is the one as it *closed* 2 days after his escrow closed. Each loan, upon closing, was transferred into the next AR series. Once the securities offering *closed* a depositor had only 90 days to add a new loan to the *loan pool* to comply with IRS mandates. Since GATES' escrow closed on September 29, 2005 and AR-13 offering closed October 1, 2005---the last day that any mortgage could be transferred into the AR-13 trust was December 28, 2005. By that date Wamu no longer owned the loan because it necessarily would have to be conveyed into the trust by that date.

23. GATES' note is dated September 20, 2005. (Exh. A-5). The copy shows fold marks because it was received in the mail after GATES requested it. GATES lost many files when his home burned down in the Jesusita fire on 5-6-2009. GATES signed the note and trust deed while he was in Idaho on vacation on or about September 23, 2005 and was not given a copy of any of the documents. (Exh A1-34). GATES was not given any explanation or counseling. During the loan processing a WaMu employee called GATES to warn him not to answer the phone to avoid an underwriter's call to verify his income. No one ever explained that the recited interest rate (5.5%) was a *teaser rate* on the \$1,142,302 principal balance.
24. Most of the funds were used to pay off existing WaMu loans. No one explained that his \$7,014.73 per month payment would rise significantly when the teaser rate expired and the adjustable rate kicked in later. Because he had tenants who paid rent GATES was able to make the payments faithfully for several years.
25. On September 23, 2005 GATES believed that he was borrowing money from WaMu as a loan. No one involved in the loan process ever disclosed or explained that his loan would be *securitized*; i.e. "sliced and diced" and "sold and resold" and "traded and re-traded" until lost in a pool of thousands of unidentified loans.
26. From 2000 to 2008 WaMu's CEO Kerry Killinger took home \$100,000,000.00 while he led WaMu into bankruptcy. WaMu in 2006 estimated its internal profit margin from subprime loans could be more than 10 times for a government-backed loan product and more than 7 times for a fixed rate product.
27. From the CEO down to loan officers WaMu's agenda was to close as many subprime loans as possible to surpass Countrywide in market share. Killinger ordered the highest commissions to be paid for the riskiest loans; i.e. loans with *teaser* rates switching to high interest adjustable rates later. Everyone jumped on the bandwagon; i.e. bankers, loan brokers, stock brokers, and every person who could grab a piece of the action to extort hefty commissions on loans destined for foreclosure. Players counted on a continuing rise in the real estate frenzy or that borrowers would sell before rates rose. It is commonly known the bubble burst in 2008. In September 2008 (3 years after GATES' loan) WaMu collapsed. COUNTRYWIDE also collapsed. There were record foreclosures nationwide. The Office of Thrift Supervision seized both failed banks and put them into receivership with the FDIC. The FDIC's receiver immediately worked a deal with JP MORGAN CHASE BANK to acquire the assets and liabilities of the failed WMu bank. On September 25, 2008 this deal was consummated by way of a "Purchase and Assumption Agreement" (P&A) between the FDIC and JPMORGAN CHASE. (see Exh I-1 -excerpts)

1 28. WaMu filed for Chapter 11 bankruptcy which prompted thousands of creditors to file claims, resulting in  
2 billions in claims from other banks, consumers, insurers, etc. and even from successor CHASE. (Exh. I6)  
3 WaMu then sued the FDIC for indemnification for billions in claims arising during bankruptcy. (Exh. I-12)  
4 Many of these claims are currently under appeal (Exh. I-17) including WaMu's appeal against the FDIC.

5 29. Defendant DB was the Trustee in the P&S WaMu AR-13 governing the pool of loans including GATES.  
6 DB was the lead Issuer offering Residential Mortgage Backed Securities (RMBS) on Wall Street to investors,  
7 while offering high commission to brokers to push RMBSs. DB made billions selling RMBSs to investors.

8 30. When DB realized most of the RMBSs it sold were losing money because borrowers were defaulting or  
9 the homes had already foreclosed, DB created a subsidiary to hedge bets against the very products DB was  
10 peddling to unsuspecting investors. (explained at Exh.G) Meanwhile DB put in claims to the government  
11 agencies who insured the trust against losses, including **AIG**. All mortgages closed with ALTA insurance  
12 policies to protect against borrower defaults. DB submitted claims and collected on these insurance policies.  
13 DB filed a claim for \$10 billion dollars in the bankruptcy court against WaMu who was in Chapter 11,  
14 arguing that DB's claim should be given priority as an "administrative expense." (Exh. G-5)

15 31. DB, one of the most profitable banks in the world created new ways to profit from the market collapse.  
16 DB submitted the same claim for \$10 billion dollars to FDIC. (Exh H-4). After the court sustained FDIC's  
17 demurrer to its complaint, having read FDIC's arguments that CHASE was liable for WaMu's liabilities as  
18 successor, DB filed an amended complaint enjoining CHASE . DB prayed for \$10 billion in cash payments  
19 for alleged WaMu breaches of duty to repurchase defaulting loans. The basis of DB's claim is that in its  
20 joint venture with WaMu it failed to use proper underwriting procedures in issuing risky loans to borrowers.  
21 DB argued if FDIC does not owe them \$10 billion then CHASE owes it as successor to the bankrupt WaMu.  
22 The theory upon which DB based its claim is that WaMu failed to repurchase defaulting loans pursuant to the  
23 terms of the governing P&S's in which WaMu promised to repurchase non-performing loans. (Exh. G-6)

24 32. DB did not stop at seeking \$10 billion from FHA, FDIC, and the WaMu Chapter 11 bankruptcy assets.  
25 On information and belief, DB paid off Edward Liddy, the government-installed CEO of AIG (government  
26 insurer of the RMBS's) to push through a **\$180 billion government bail out** funded by the same American  
27 taxpayers who lost their homes in fraudulent foreclosures as a result of the DB/WaMu fraudulent loans, as  
28 well as the same American taxpayer/investors who were duped into buying DB's worthless RMBS's.

- 1 33. DB profited even further by creating “default credit swaps” shorts against the products it peddled.  
2 As soon as AIG received the \$180 billion from taxpayers, AIG issued \$165,000,000 in bonuses to AIG  
3 executives **and sent \$11.8 billion to Deutsche Bank in Germany.** DB finally got its \$10  
4 billion in cash. Despite this windfall from our taxpayers as a reward for its fraud DB continues to pursue the  
5 same \$10 billion claims as described above against FDIC, FHA, the Bankruptcy Court, insurers and others.
- 6 34. The WaMu defendants (WMB, WAAC, WMSC, WMMSC) and successor JP Morgan Chase (CHASE)  
7 are engaged in prolific litigation against each other, against Deutsch Bank, the FDIC and bankruptcy court.  
8 The litigations are all related to the collapse of WaMu who is jointly liable for the securitization debacle.
- 9 35. While these predators employed lawyers to pursue claims in federal courts 50 state courts, they devised  
10 yet another scheme to bilk even more money by stealing borrowers’ homes in wrongful foreclosures.  
11 In breach of DB’s trustee duty to preserve trust assets for *certificate* holders---DB “assigned” the trust deeds.  
12 The P&S defines a **beneficial holder** as “a Person holding a beneficial interest in any Book-Entry Certificate  
13 as or through a DTC Participant or an indirect DTC Participant or a Person holding a beneficial interest in  
14 any Definitive Certificate.” (see Exh. D-7 top)
- 15 36. DB blatantly violated its expressed duties assumed by the governing P&S (see Exh. D-9 middle) because  
16 those same trust deeds it was selling (assigning) secured the underlying debts on the loans in the pool.  
17 Section 2.02 expressly prohibited the trustee from alienating any trust asset and to “consider the interest of its  
18 trust creditors in its actions.” (see Exh D-9) The P&S does not allow the trustee to “possess or assign the  
19 assets” of the trust. (D-9). DB violated an express duty not to defeat the REMIC trust’s tax-free status.  
20 (see D-12) The section recited, “Neither the trustee nor the Tax Matters Person shall knowingly and  
21 intentionally take any action that would cause the termination of the REMIC status.” (D-9)
- 22 37. The governing P&S expressly set forth the duties and liabilities of the trustee to maintain trust assets and  
23 prohibited the splitting of Trust Deeds from Notes because if the Trust Deed is assigned to another it renders  
24 the NOTE unsecured, thereby making the *certificates* worthless and defeating the trust’s IRS tax-free status.
- 25 38. WaMu/Chase breached their fiduciary duty to their borrowers by facilitating this additional fraud.  
26 CHASE and DB initiated a campaign to illegally sell *assignments of trust deeds* securing loans in the pools.  
27 This enabled greedy *banksters* to buy these illegal and unenforceable assignments and to illegally confiscate  
28 thousands of American homes through illegal foreclosures based upon assignments which were void *ab initio*.



1 39. DB and/or CHASE, in conjunction with other conspirators, began to manufacture thousands of fraudulent  
2 “assignments of trust deeds” with “cut and paste” techniques whenever it was necessary to back-date them.  
3 All of these illegal acts exposed the creators of these fraudulent trust deed assignments to criminal liability  
4 under Penal Codes, Sections 115, 132, 133, 134 and 135. (Exh. K-13). DB/CHASE hired a conspiring entity  
5 Cal-Western Reconveyance Company to foreclose on homes based on the fraudulent *trust deed assignments*.  
6 These foreclosures were fraudulent because the *pretend lenders* had no beneficial interest in these notes.  
7 The only persons who had any beneficial interest in the notes were *certificate* holders who funded the loans.  
8 Splitting off GATES’ trust deed which secured the note violated the express terms of the P&S. (Exh. D-9)

9 40. DB, as trustee, had the power to order foreclosure on any non-performing loan in the respective loan pool.  
10 DB HAD NO POWER TO SELL OR ASSIGN TRUST DEEDS TO PRETEND LENDERS. But this is  
11 exactly what DB/WaMu did. DB/WaMu sold trust deeds to *pretend lenders* who had no interest in the loans.  
12 These assignments were void *ab initio*, not only because they were fraudulently manufactures by persons who  
13 lacked authority to execute them, but because the DB trustee was not authorized to sell any assets in the trust.  
14 DB, WaMu and CHASE manufactured, back-dated, and recorded a fraudulent conveyance on June 12, 2009.

#### 15 CONGRESSIONAL INVESTIGATION OF DEUTSCHE BANK/WAMU FRAUD

16 41. Fraudulent foreclosures became so prolific across America that homeowners began to revolt against the  
17 predators by hiring lawyers to defend foreclosures, demanding a Congressional Investigation and making  
18 complaints to state and federal prosecutors. Prosecutors began to investigate DB/WaMu/Chase (see Exh. E).  
19 42. On April 13, 2011 CONGRESS released a 632 page report entitled “Wall Street and the Financial Crises”  
20 Exh E2 – E8 is 6-pages outlining Deutsche Bank fraud.

21 43. The United States Attorney filed a civil mortgage fraud case against Deutsche May 3, 2011 alleging DB  
22 repeatedly lied to its agents to be included in a government program to select mortgages to be insured by the  
23 government, who paid out billions in losses caused by Deutsche Bank and its affiliate MortgageIt (Exh E-9)

24 44. Then Fannie Mae, et al filed a complaint for mortgage fraud against Deutsche Bank. (Exh. J)

25 45. On Friday, January 11, 2011 United States Attorney Eric Holder held a press conference to announce the  
26 launching of a mortgage fraud task force including state and federal prosecutors who will join in a campaign  
27 to seek justice against Wall Street predators and bank conspirators who caused a collapse in USA’s economy.  
28 Eric Holder discussed the “robosigning scandal” and promised Americans he would prosecute the predators.

**WHY THE RECORDED ASSIGNMENT OF TRUST DEED IS UNENFORCEABLE  
AND EVEN IF IT WERE ENFORCEABLE WHY THE FORECLOSURE IS ILLEGAL**

46. CCP §2924 requires that a non-judicial foreclosure sale shall not take place unless it is done on behalf of the *beneficiary* of the note secured by the trust deed. Therefore, only a *beneficiary* has standing to foreclose. The Notice of Default fails to identify any *beneficiary*. (Exh. B-5) It merely lists “LPP Mortgage LTD” as the contact to find out how much must be paid to avoid foreclosure. At no time has LPP Mortgage LTD ever held any beneficial interest in the NOTE, nor could LPP have acquired any beneficial interest in the NOTE because the NOTE was assigned to DB Structured Products Inc. on September 25, 2005. (Exh. A-10)

47. There is a stamp under GATES signature which reads, “Pay to the order of DB Structured Products, Inc Without Recourse Washington Mutual Bank, FA By Cynthia Riley Vice President.” DB was the trustee on the P&S agreement which securitized GATES note. (Exh. D2). The offering on the pool of loans including GATES’ loan closed on October 1, 2005. (Exh. D2). Once the note was assigned to DB on 9-25-05 the note became an asset of the trust. Pursuant to the governing documents of the P&S and IRS code, all loans had to be added 90 days after closing.

48. Therefore, GATES loan became a trust asset as no later than December 29, 2005 (90 days post closing). **Accordingly, there could be no further assignment to anyone.** Once in the trust, the trustee could not split the trust deed from the NOTE. The trustee was required to hold the original note and trust deed. (Exh. D7) Additionally the trustee must hold originals of all assignments on the note as part of the mortgage file (D-7). The P&S defines the “**beneficial holder**” as a person holding a beneficial interest in a certificate. (D-7) The trust deed is a voluntary encumbrance executed by the property owner. The power of sale is voluntarily given by the homeowner; thus the trustee may only foreclosure as set forth in the power granted by the trustor

49. The GATES note states in paragraph 7 (Exh. A-7) “If I am in default, the **Note Holder** may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the **Note Holder** may require me to pay immediately the full amount of Principal that has not been paid and all the interest that I owe on that amount.” **The Note Holder is defined in the P&S as any person holding a certificate.** LPP is not a note holder. Only the trustee (DB) could foreclose on behalf of the certificate holders.

50. Exhibit K contains and appendix of relevant UCC codes governing negotiable instruments for court review

1 51. A loan servicer is not a Note Holder or a lender and lacks the power or authority to foreclose a note.  
2 Even if a servicer could foreclose on the property it would not be LLP because it is not the loan servicer.

3 52. The GATES trust deed, at paragraph 24 authorizes only a **lender** to substitute a trustee. (Exh. A-26)  
4 The Substitution of Trustee recorded against GATES' property on 11-15-11 is executed by LPP. (Exh. B10)  
5 LPP is not, and never has been a lender. A lender is the person(s) who funded GATES loan; i.e. **certificate**  
6 **holders** who purchased the RMBS's in the WAMU/Deutsche AR-13 offering. LPP is not one of them.  
7 LPP is nothing more than a *pretend lender*.

8 53. Andrew Beal (BEAL) from Plano Texas is a billionaire who owns BEAL BANK. On information and  
9 belief, plaintiff alleges BEAL orchestrated thousands of fraudulent foreclosures to acquire California homes.  
10 BEAL owns MGC (Plano Texas) who purports to be the loan servicer and LPP (Plano, TX). BEAL controls  
11 (and may own part of) defendant CWRC---the foreclosure firm which has barreled through California like a  
12 tornado seizing homes and discarding homeowners' property like trash onto their lawns or into dumpsters.  
13 This may be how BEAL became a billionaire. DB is currently in litigation with CHASE and WaMu in state  
14 and federal courts, as well as the bankruptcy court. (Exh.G, H and I). The gravamen of DB's claim is that it  
15 wants to enforce the warranties given by WaMu in the governing P&S. WaMu had agreed to repurchase any  
16 defaulting loan. DB alleged that WaMu continues to deny DB access to files so it can identify defaults.

17 54. DB alleges that it is entitled to \$10 billion in cash damages instead of an order to compel WaMu to  
18 repurchase the defaulting loans. By this argument DB admits that no loans have been removed from the trust.  
19 FDIC and the bankruptcy court have frozen assets until all of the disputes are resolved as to a repurchase duty  
20 Accordingly, GATES' mortgage file, with the NOTE may be under the continuing jurisdiction of the  
21 bankruptcy court and other state courts, until these litigations are resolved. (Delaware and New York).

22 55. GATES acquired the subject property, 1200 Palomino Road on February 15, 1977 and conveyed the asset  
23 into the GATES trust on 6-19-88. (Exh. A). GATES executed a note and trust deed on 9-23-05. (Exh.A5-34)

24 56. The trust deed is unenforceable and *void ab initio* because GATES could not promise to pay a dead entity.  
25 The SEC website [http://www.secinfo.com/\\$/SEC/Registrant.asp?CIK=1058259](http://www.secinfo.com/$/SEC/Registrant.asp?CIK=1058259) shows the last entry on 2002.  
26 Washington Mutual Bank, FN ended on 3/21/02 (Sec 15-12G) "Certification of Termination of Registration  
27 of a Class of Securities Form 15). There were no further filings. The entity was defunct as of 4-25-05. It is  
28 hornbook, common knowledge, that one can not promise to pay a dead person, whether it be a human or not.

1 57. Even if Washington Mutual Bank, FN were not a defunct entity on 9-25-05 when GATES closed escrow  
2 the NOTE is still unenforceable. The signature stamp of Cynthia Riley appears at the bottom of the note.

3 (Exh. A10) Riley signed as *Vice-President of Washington Mutual Bank, FA*. Cynthia Riley could have not  
4 authority to execute any assignment for an entity which was defunct long before 9-25-05.

5 58. Cynthia Riley's name also appears at the bottom of the manufactured assignment of trust deed (Exh. B1)  
6 This instrument was recorded against 1200 Palomino on June 12, 2009 although it was purportedly executed  
7 on August 30, 2006--- nearly THREE YEARS EARLIER. It is common knowledge that Cynthia Riley has  
8 already been identified as a "robosigner" (a person's name converted into a STAMP used on thousands of  
9 foreclosure documents). Cynthia Riley and the notary who notarized her signature (G.F. Carney) are both  
10 employees of CHASE in Florida. A close look at the document shows the bottom half of the document does  
11 not line up with the top half. The part including the notarized signature of this robosigner Cynthia Riley is the  
12 part which is on an angle. The only way this could happen is if the bottom section (on an angle) was pasted  
13 to the document. (Exh B-1) Plaintiff believes this document was created with "cut and paste" notarization  
14 previously used on some other document. Also, why would it be executed on 8-30-06 but not recorded until 3  
15 years later 6-12-09 (Exh.B-1)? Riley could not convey any interest because it had already been assigned to  
16 DB Structure Products, Inc. two years prior.

17 59. Typically if an assignee receives an assignment worth \$1,000,000 he/she would generally record it to  
18 maintain priority in the chain of title. Who would sell a million dollar asset for \$10? (Exh. B-1).

19 60. Secondly, Cynthia Riley was never the Vice President of Washington Mutual Bank, FN and even if she  
20 were on 8-30-2006 she had no power to assign a trust deed to DB Structured Products, Inc. because this bank  
21 did not exist on 8-30-2006. It was completely defunct as of 4-25-2005 with its last filing at SEC in 2002.  
22 Finally, it is obvious that the hand-written entries on the instrument were interjected after the assignment  
23 was executed by the purported Vice President of the bank (robosigner Cynthia Riley). Both of these persons  
24 (Riley and Carney) currently work for CHASE (successor to WaMu). Accordingly, the more reasonable  
25 explanation is that CHASE's low-level employees, at the direction of managers, manufactured the fraudulent  
26 document so they could pawn off the trust deeds (which they knew were unenforceable) on secondary market  
27 loan purchasers. On information and belief, plaintiff alleges that CHASE, as successor to WaMu on 9-28-08  
28 manufactured this document in the spring of 2009 and backdated the execution of the document to 8-30-2006.

1 It could not have been dated in the spring of 2009 because all assets were frozen in the WaMu Chapter 11  
2 bankruptcy filed in August 2008 so CHASE would have been unable to assign any interest to DB in 2009.

3 61. CHASE is currently bound by a consent order (#AA-EC-11-15) the United States Treasury Department,  
4 Comptroller of Currency CHASE (consent order AA-EC-11-15) against pursuing foreclosures. (see Exh. M)  
5 The assignment of trust deed from Washington Mutual Bank, FN (a defunct bank as of 4-25-2005) to DB  
6 Structured Products, Inc. is a forged and a fraudulently instrument created with (B-1)

7 62. Accordingly, the Wamu trust deed assignment recorded 6-12-09 is unenforceable, illegal and ineffective.  
8 The subsequent assignment (recorded a minute after the first bogus assignment) was also manufactured, just  
9 like the prior assignment, and possible forged by another robosigner Shirley Arroyo.

10 63. Shirley Arroyo was never Vice-President of DB Structured Products, Inc. (DB). Arroyo had no power or  
11 authority to execute and assignment from DB Structured Products, Inc. to LPP Mortgage LTD, It is hornbook  
12 knowledge that one can not get good title from a thief. Since the earlier assignment from the defunct bank to  
13 DB Structured Products was void *ab initio*, invalid and assigned nothing, the subsequent was also void.  
14 One cannot make chocolate mousse out of cow dong.

15 64. Assuming the first assignment were valid (it was not) DB could not assign the trust deed because the P&S  
16 expressly prohibited the DB trustee from assigning any assets of the trust as alleged in detail above. Secondly,  
17 on 9-25-08 WaMu filed for bankruptcy and whether it will be compelled to repurchase the failing loans from  
18 the trust has yet to be adjudicated. All of these cases are still pending in state, federal and bankruptcy courts.

19 65. Considering that the evidence shows DB and WaMu conspired in the securitization of GATES loan to  
20 defraud borrowers as well as investors the more likely explanation for all the improprieties in the fabricated  
21 assignments is that DB and WaMu/CHASE conspired again by fabricating the fraudulent assignments with  
22 specific intent to create a new "product" they could sell to other *banksters* in the secondary market. In this  
23 case, they sold the product to LPP. Or LPP was an additional conspirator who participated in the fraud.  
24 Plaintiff intends to discover the answers to these questions by way of vigorous discovery in this case.

25 66. Plaintiff believes that CWRC intends to barrel forward with the foreclosure, knowing it is fraudulent,  
26 and then convey the property into its parent PROMISS SOLUTIONS, and PROMISS HOMEOWNERS  
27 SOLUTIONS to be recycled in the sales market to generate even more profits for the conspirators.

28 67. Plaintiff seeks a temporary restraining order and preliminary injunction to determine validity of foreclosure

**FIRST CAUSE OF ACTION**  
**(DECLARATORY AND INJUNCTIVE RELIEF)**  
(to enjoin foreclosure and quiet title)  
**(against all defendants and Does 1-50)**

68. Plaintiff incorporates allegations in the preceding paragraphs by reference as though set forth in full.

69. An actual controversy exists amongst the parties as to the validity of the loan, validity of the trust deed, validity of the foreclosure proceedings, and to who has exclusive right to foreclose, if such right exists at all. Because such controversy exists the court is empowered to resolve the disputes by declaring the rights and responsibilities of the parties. The court has power to issue a temporary order to restrain foreclosure set for **February 6, 2011** under CCP §526 and to set a hearing for a preliminary injunction (CCP §526s) to restrain foreclosure until the court can ascertain which party, if any, has standing to pursue foreclosure. The court can issue a permanent injunction to forever restrain any party from foreclosing, effectively quieting title. GATES hereby seeks such determinations of the court and files a motion for a restraining order with this complaint. Whatever powers not expressly granted to courts by statute they are granted under CCP §187.

70. A temporary restraining order, and preliminary injunction are necessary in this case because GATES property is unique, rendering money damages inadequate, he has worked to improve the property for 30 years and worked diligently to rebuild the home after it burned down in the JESUSITA fire three years ago.

71. GATES would be irreparably harmed if he loses the property that he has worked on for 30 years.

72. Defendants are not prejudiced by waiting for the court's determinations as the home can only increase in value as GATES continues to rebuild it. The rebuilding is only 80% finished so it can not be marketed now. The property can not be sold by GATES as defendants' fraudulent trust deed assignment clouds his title.

73. Defendants are violating GATES rights by foreclosing. A restraining order and preliminary injunction would prevent a multiplicity of actions because if the home sells on Feb. 6, 2011 the sale will be void *ab initio* because it is based on a trust deed assignment which is at best unenforceable under California law, and at worst, criminally fraudulent under Penal Codes §115, 132-134 and §532.

74. GATES seeks a declaration that the trust deed is unenforceable and/or fraudulent. GATES seeks to permanently enjoin foreclosure and order cancellation of both trust deeds so that title to the property vests only in GATES in fee simple, free and clear of all liens. GATES seeks to recover all damages for having to bring the action including attorney fees and costs pursuant to Civil Code §1717.

**SECOND CAUSE OF ACTION**  
**(SLANDER OF TITLE AND CONSPIRACY TO SLANDER TITLE)**  
**(against all defendants and Does 1-50)**

75. Plaintiff incorporates allegations in the preceding paragraphs by reference as though set forth in full.

76. Defendants, and each of them as agents of each other and co-conspirators, conspired with other to fabricate the false documents recited in the next paragraph and caused them to be recorded against plaintiff's property in the County of Santa Barbara County Recorder's Office.

77. On June 12, 2009 defendants caused to be recorded, in the County of Santa Barbara Recorder's Office, two false instruments, which they knew were false before they recording them; to wit, Document Numbers 2009-0034366 and 2009-0034367. From 8-9-2011 until through January 18, 2011 defendants caused a series of false documents to be recorded in the County of Santa Barbara Recorder's Office; to wit, a series of Notices of Default, Notices of Sale and Substitution of Trustee.

78. Defendants willfully, maliciously and without privilege recorded all of these false publications which impaired the vendibility of GATES property and clouded his title. The publications were motivated by oppression and fraud in that defendants knew the statements in recorded instruments were false when made. These acts violated Penal Codes §115, 132, 133, 134, 135 532. Plaintiff is entitled to compensatory damages for the costs of removing the slanderous statements and false instruments from the record. Plaintiff is entitled to punitive damages pursuant to Civil Code §3294. Plaintiff is entitled and seeks an order expunging all false documents recorded to cloud plaintiff's title.

**THIRD CAUSE OF ACTION**  
**(FRAUD AND CONSPIRACY TO DEFRAUD)**  
**(against all defendants and Does 1-50)**

79. Plaintiff incorporates allegations in the preceding paragraphs by reference as though set forth in full.

80. Defendants, and each of them as agents of each other co-conspirators of each other, and alter egos of each other conspired with other to manufacture the false documents recited in the next paragraph and caused them to be recorded against plaintiff's property in the County of Santa Barbara County Recorder's Office.

81. Defendants willfully, maliciously and without privilege recorded all of these false publications which impaired the vendibility of GATES property and clouded his title and did so with intent to steal the property.

1 82. The publications were motivated by oppression and fraud in that defendants knew the statements in the  
2 recorded instruments were false when made. These acts violated Penal Codes §115, 132, 133, 134, 135, 532.

3 83. Defendants caused the false instruments with false statements to be recorded with specific intent to  
4 facilitate stealing plaintiff's property and to enable the trustee to foreclose and sell plaintiff's property.  
5 Defendants acts were motivated by insatiable greed and with a desire to wrongfully evict plaintiff.

6 84. These acts violated Penal Codes §115, 132, 133, 134, 135, 532. Plaintiff is entitled to compensatory  
7 damages for the costs of removing the slanderous statements and false instruments from the record. Plaintiff  
8 is entitled to punitive damages pursuant to Civil Code §3294.

9 85. Defendants ask the court to refer this case to the District Attorney for criminal prosecution under Penal  
10 Codes §115, 132, 133, 134, 135, 532 once the evidence proves these documents were fraudulently  
11 manufactured for a malicious and oppressive purpose; and for monetary gain at the detriment to plaintiff.

12 86. On June 16, 2009 which was only 4 days after recording fraudulently manufactured documents with  
13 knowingly false statements, MGC sent GATES a letter notifying him that they were the new loan servicers.  
14 MGC and LLP are sister corporations or parent child corporations and both are controlled by Andrew Beal,  
15 a billionaire in Plano Texas, who may have acquired his billions through schemes such as these. For the past  
16 two years plaintiff has been making payments to MGC who concealed the fact that they had no right to collect  
17 money from him because they were not a lender nor a beneficiary of his note. See UCC codes (Exh. K)

18 87. Plaintiff has been damaged in that MGC has wrongfully and maliciously collected thousands of dollars  
19 from GATES who did not discover the fraud until he sought the advice of counsel during the past year.

20 88. On 5-6-09 plaintiff's home burned down in the Jesusita fire. GATES submitted a claim to his insurer,  
21 Farmers who processed his claim. Farmers told GATES they would not pay out on the claim until he rebuilt  
22 the home. Plaintiff was forced to borrow money on credit cards to pay for material to rebuild the home,  
23 which is an ongoing process about 80% finished to date. The first week of February 2010 GATES received 3  
24 Farmers checks for a total of \$202, 548.64 which were reimbursements for materials used to rebuild. (Exh F1)  
25 For some unknown reason Farmers issued the checks jointly to MGC and GATES. When he called MGC  
26 they told him to sign the checks and forward them to MGC for signature, with a promise to mail the checks  
27 back to GATES after they were signed off at MGC. GATES complied. MGC cashed the checks but did not  
28 mail them back to GATES. Instead they kept the cash and ignored GATES when he called and wrote letters.



89. For nearly six months (from January 30, 2010 until May of 2010) MGC ignored GATES desperate pleas to release the funds to him. GATES was forced to hire counsel to compel MGC to return the funds he was entitled to receive; to wit, the proceeds on a policy in which he was the named beneficiary as owner. Counsel was able to negotiate and get half of the funds released. MGC sent \$113,622.96 on 5-12-10 (see Exh. F2,F3)

90. At the end of 2010 GATES received a 1099 form from the IRS entitled "cancellation of debt." (Exh.F4) Plaintiff brought the form to counsel for review. The boxes to enter the amount of debt and interest cancelled were left blank. This was suspicious at best. Plaintiff is informed and believes that MGC or Dovenmuehle Mortgage, Inc. (the name on the 1099 form) took a significant tax write-off by charging off the loan. MGC may have submitted its own claim on either its ALTA policy (lenders insurance policy) or some other policy. IRS regulations requires a 1099 form to be sent to the borrower whenever a lender charges off a loan.

91. Defendant MGC willfully, maliciously and without privilege defrauded plaintiff by concealing their trick to get him to mail them the Farmers fire insurance proceeds checks, and by willfully ignoring his desperate pleas to release the funds with specific intent to steal his money. All of the above-described acts and evil contrivances were motivated by oppression, fraud and insatiable greed. in that defendants knew the promises to mail him back the checks were false when made. Defendants knew GATES was elderly and disabled.

92. GATES justifiably relied on the promises MGC made and was damaged. GATES had to use high interest credit cards for two years after the fire just to survive while MGC confiscated his insurance proceeds with specific intent to keep them forever. If was only after threats by counsel to file a RICO cases against them did they actually release a check for half the proceeds to counsel after holding the funds for five months and collecting interest on over \$202,548.64. Plaintiff is entitled to compensatory damages and full restitution. Plaintiff is entitled to punitive damages pursuant to Civil Code §3294. Plaintiff seeks attorney fees pursuant to his contract with the pretend lender.

**FOURTH CAUSE OF ACTION  
(BREACH OF FIDUCIARY DUTY – CONSTRUCTIVE FRAUD)  
(against all defendants and Does 1-50)**

93. Plaintiff incorporates allegations in the preceding paragraphs by reference as though set forth in full.

94. Defendants, and each of them, as lender, trustee, mortgage broker, financial advisor, at all relevant times had, and have a fiduciary duty to plaintiff to advise him and place him on notice of all disclosures that are required by law, especially in a real estate loan transaction, and to provide him with the true facts upon which

1 he could make a determination as to his need to either close the loan or look for more favorable financing.  
2 Plaintiff alleges that on or about September 23, 2005 and thereafter, defendants, and each of them, breached  
3 their fiduciary duty by failing to provide Plaintiff with the disclosure notices required in Civil Code §1788  
4 Rosenthal Fair Debt Collection Act. As a result of defendants breaches of a duty of care Plaintiff has been  
5 damaged and injured both at equity and law, in that plaintiff's property is scheduled for non-judicial  
6 foreclosure sale on February 6, 2012 and Plaintiff has no other remedy at law to address defendants'  
7 breaching conduct, other than to deny them the opportunity to confiscate his home.

8 95. Plaintiff is entitled to damages for all costs related to the predatory loan foisted upon him by defendants  
9 in the interest of profiteering , and high commissions. Plaintiff is entitled to rescind the loan.  
10

11 **FIFTH CAUSE OF ACTION**  
12 **(ELDER ABUSE W&I §15657)**  
13 **(against all defendants and Does 1-50)**

14 96. Plaintiff incorporates allegations in the preceding paragraphs by reference as though set forth in full.

15 97. Plaintiff is a 69-year old disabled widower. Plaintiff is in a special class of "elders" protected from abuse  
16 under W& I §15657 including financial abuse, and is also protected because has been disabled since 45.

17 98. On June 16, 2009 which was only 4 days after recording fraudulently manufactured documents with  
18 knowingly false statements, MGC sent GATES a letter notifying him that they were the new loan servicers.  
19 MGC and LLP are sister corporations or parent/child corporations and both are controlled by Andrew Beal,  
20 a billionaire in Plano Texas who may have acquired his billions though schemes such as what happened here.  
21 For the past two years plaintiff has been making payments to MGC who concealed the fact that they had no  
22 right to collect money from him because they were never a lender nor a beneficiary or obligee on his note.

23 99. Plaintiff has been damaged in that MGC wrongfully and maliciously collected thousands of dollars from  
24 GATES who did not discover the fraud until he sought the advice of counsel during the past year.

25 100. On 5-6-09 plaintiff's home burned down in the Jesusita fire. GATES submitted a claim to his insurer,  
26 Farmers who processed his claim. Farmers told GATES they would not pay out on the claim until he rebuilt  
27 the home. Plaintiff was forced to borrow money on credit cards to pay for material to rebuild the home,  
28 which is an ongoing process about 80% finished to date. The first week of February 2010 GATES received 3  
Farmers checks for a total of \$202, 548.64 which were reimbursements for materials used to rebuild. (Exh F1)

1 For some unknown reason Farmers issued the checks jointly to MGC and GATES. When he called MGC  
2 they told him to sign the checks and forward them to MGC for signature, with a promise to mail the checks  
3 back to GATES after they were signed off at MGC. GATES complied. MGC cashed the checks but did not  
4 mail them back to GATES. Instead they kept the cash and ignored GATES when he called and wrote letters.

5 101. For nearly six months (from January 30, 2010 until May of 2010) MGC ignored GATES desperate pleas  
6 to release the funds to him. GATES was forced to hire counsel to compel MGC to return the funds he was  
7 entitled to receive; to wit the proceeds on a policy in which he was the named beneficiary as owner. Counsel  
8 was able to negotiate and get half of the funds released. MGC sent \$113,622.96 on 5-12-10 (see Exh. F2,F3)

9 102. At the end of 2010 GATES received a 1099 form from the IRS entitled "cancellation of debt."

10 Plaintiff brought the form to counsel for review. The boxes to enter the amount of debt and interest cancelled  
11 were left blank. This was suspicious at best. Plaintiff is informed and believes that MGC or Dovenmuehle  
12 Mortgage, Inc. (the name on the 1099 form) took a significant tax write-off by charging off the loan. MGC  
13 may have submitted its own claim on either its ALTA policy (lenders insurance policy) or some other policy.  
14 IRS regulations requires a 1099 form to be sent to the borrower whenever a lender charges off a loan.

15 103. Defendant MGC willfully, maliciously and without privilege defrauded plaintiff by concealing their trick  
16 to get him to mail them the Farmers fire insurance proceeds check, and by willfully ignoring his desperate  
17 pleas to release the funds with specific intent to steal his money. All of the above-described acts and evil  
18 contrivances were motivated by oppression and fraud in that defendants knew the promises to mail him back  
19 the checks were false when made.

20 104. GATES justifiably relied on the promises MGC made and was damaged. GATES had to use high interest  
21 credit cards for two years after the fire just to survive while MGC confiscated his insurance proceeds with  
22 specific intent to keep them forever. If was only after threats by counsel to file a RICO cases against them  
23 which caused them to release the checks to counsel after holding the funds for five months. Plaintiff is  
24 entitled to compensatory damages and full restitution. Plaintiff is entitled to punitive damages pursuant to  
25 Civil Code §3294. Plaintiff seeks attorney fees pursuant to his contract with the pretend lender.

26 105. In engaging in such acts defendants intended to defraud plaintiff, and did defraud plaintiff as defined by  
27 Welfare and Institutions Code §15610.30.  
28

1 106. As a direct and proximate cause plaintiff has been deprived of his property, namely his money, and has  
2 sustained related damages such as attorney fees to pursue his remedies and stop the wrongful foreclosure.

3 107. Defendants conduct constituted recklessness, malice, oppression and malignant heart. The acts were  
4 willful and intentional. Plaintiff is entitled to recover damages for the sake of example and by way of  
5 punishing defendants for financial abuse pursuant to W & I §15657.5 and Civil Code §3294. Plaintiff is  
6 entitled to recover reasonable attorney fees and costs for financial abuse under W&I §15657.5

7  
8 **SIXTH CAUSE OF ACTION**  
9 **(QUASI-CONTRACT RESTITUION)**  
10 **(against all defendants and Does 1-50)**

11 108. Plaintiff incorporates allegations in the preceding paragraphs by reference as though set forth in full.

12 109. MGC demanded monthly mortgage payments from Plaintiff starting on July 1, 2009 and continued to  
13 collect payments from Plaintiff for the past two years. Plaintiff reasonably relied upon MGC's assertion that it  
14 was entitled to payments.

15 110. MGC knowingly accepted payments and retained them for its own use knowing that MGC/LLP was not  
16 a beneficiary under Plaintiff's Note on the date that its assets were transferred to DB Structured Products, Inc.  
17 and therefore MGC/LLP did not acquire any right from DB to accept or keep Plaintiff's payments. It would  
18 be inequitable for MGC/LLP to retain the payments it received from Plaintiff. The equitable remedy of  
19 restitution, when unjust enrichment has occurred, is an obligation created by the law without regard to the  
20 intent of the parties, and is designed to restore the aggrieved party to his or her former position by return of  
21 the thing or its equivalent in money.

22 111. The DOT states in Paragraph 23 (Exh. A25): "Upon payment of all sums secured by this Security  
23 Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument  
24 and all notes evidencing debt secured by this Security Instrument to Trustee." The obligations to WaMu under  
25 the DOT were fulfilled when WaMu received the balance on the Note as proceeds of sale through  
26 securitization to private investors, who provided funds to close GATES escrow. MGC has been unjustly  
27 enriched by demanding and collecting monthly payments from Plaintiff in the amount to be determined in the  
28 accounting claim below.

1 112. Plaintiff seeks restitution for any payments he made to MGC/LPP/Wamu that were not paid to the lender  
2 or beneficiary, if any, and were unjustly retained by MGC/LPP/WaMu. Plaintiff also seeks damages in excess  
3 of \$100,000 for depreciation to his property as a result of the wrongful foreclosure proceedings initiated by  
4 CWRC on behalf of MGC/LLP.

5 **SEVENTH CAUSE OF ACTION**  
6 **(QUIET TITLE)**  
7 **(against all defendants and Does 1-50)**

8 113. Plaintiff incorporates allegations in the preceding paragraphs by reference as though set forth in full.

9 114. Plaintiff seeks to quiet title against the claims of Defendants and all persons claiming any legal or  
10 equitable right, title, estate, lien, or adverse interest in the Wilshire Property as of the date the Complaint was  
11 filed pursuant to Cal. Code Civil Procedure §760.020.

12 115. Plaintiff is the titleholder of the 1200 Palomino Property according to the terms of Grant Deed (Exh A-3).

13 116. WaMu securitized Plaintiff's single-family residential mortgage loan through Washington Mutual  
14 Mortgage Securities Corp, and/or Washington Mutual Asset Acceptance Corporation.

15 117. Plaintiff is informed and believes that the lawful beneficiary (the investors) have been paid in full.

16 118. The DOT states in §23 (Exh. A5):

17 23. Reconveyance. Upon payment of all sums secured by this Security Instrument, lender shall  
18 request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes  
19 evidencing debt secured by this Security Instrument to trustee. Trustee shall reconvey the Property  
20 without warranty to the person or persons legally entitled to it.

21 119. **The DOT does not state that Plaintiff must pay all sums. It states that all secured sums must be paid.**

22 The obligations owed to WaMu under the DOT were fulfilled and the loan was fully paid when WaMu  
23 received the balance on the Note as proceeds of sale through securitization of the loan and insurance proceeds  
24 from Credit Default Swaps. Chase did not purchase the loan from the FDIC on 9/25/08.

25 120. Defendants' claims are adverse. None defendant can prove any interest in the Note or show that the Note  
26 is secured by the DOT, as well for the reasons set forth in the preceding causes of action. As such, Defendants  
27 have no right, title, lien, or interest in the 1200 Palomino Property. Plaintiff therefore seeks a judicial  
28 declaration that the title to the Property is vested solely in Plaintiff and that Defendants have no right, title,  
estate, lien, or interest in the Property and that Defendants and each of them are forever enjoined from  
asserting any right, title, lien or interest in the Property adverse to Plaintiff.

**EIGHTH CAUSE OF ACTION  
(CONTRACT RECISION)  
(against all defendants and Does 1-50)**

121. Plaintiff incorporates allegations in the preceding paragraphs by reference as though set forth in full.

122. Plaintiff is informed and believes that WaMu routinely approved predatory real estate loans to unqualified buyers in 2005 and implemented unlawful lending practices by encouraging brokers and loan officers to falsify borrowers' income and assets to meet underwriting guidelines when borrowers were not qualified. WaMu employees falsified Plaintiff's Income, Assets and Liabilities.

123. Plaintiff followed the instructions of WaMu's loan officer when he submitted a Loan Application to WaMu that contained only his name, address, phone number, social security number, and bank accounts. GATES believes, but is not sure, that an employee filled out the application and presented it for Plaintiff's signature on 9-23-05 showing an inflated market value for the 1200 Palomino property.

124. Plaintiff is informed and believes that WaMu pre-sold Plaintiff's mortgage to investors based on inflated valuation. Immediately after he signed the Note, WaMu transferred all of its interest in the Note to an investment bank that bundled Plaintiff's Note with numerous other residential mortgages into residential mortgage-backed securities ("RMBS") which were structured into synthetic collateralized debt obligations ("CDOs") and sold to investors in Washington Mutual Mortgage Pass-Through Certificate AR-13.

125. Plaintiff is informed and believes that the investment bank intended to short the portfolio it helped to select by entering into credit default swaps to buy protection against the certain event that the promissory notes would default. WaMu expected that Plaintiff would not have the ability to repay the loan. It was not just that WaMu was unconcerned with a possible outcome that Plaintiff would default; WaMu knew that he could not perform and expected him to default on the loan.

126. Washington Mutual Bank, the sponsor of the securitization transaction, was a wholly owned subsidiary of Washington Mutual Inc. Securitization of mortgage loans was an integral part of Washington Mutual Inc.'s management of its capital. It engaged in securitizations of first lien single-family residential mortgage loans through Washington Mutual Mortgage Securities Corporation, as depositor, beginning in 2001. WaMu acted only as a servicer of Plaintiff's loan.

1 127. WaMu failed to disclose to Plaintiff that its economic interests were adverse to Plaintiff and that WaMu  
2 expected to profit when Plaintiff found it impossible to perform his obligation and defaulted on his mortgage.

3 128. A necessary element in the formation of an enforceable contract under the common law is a meeting of  
4 the minds. Two or more parties must share some expectation that a future event will occur. Plaintiff expected  
5 that he would borrow money from WaMu, he would pay it back, and then he would own the Property. WaMu  
6 expected that Plaintiff would borrow money, he would not be able to pay it back, and then WaMu or the  
7 investors would own the Property. Since there was no shared expectation—no meeting of the minds—no  
8 contract was formed between Plaintiff and WaMu when WaMu falsified his application to qualify for the  
9 loan.

10 129. In addition to WaMu's expectation that Plaintiff would lose title to the 1200 Palomino Property through  
11 foreclosure, WaMu anticipated transferring the Note to investors immediately after Plaintiff signed the Note.  
12 Plaintiff is informed and believes that WaMu purchased credit default insurance so that WaMu would receive  
13 the balance on the Note when Plaintiff defaulted, in addition to any money and commissions WaMu received  
14 when it securitized the Note and sold it to investors.

15 130. Not only did WaMu dispense with conventional underwriting practices in 2005, it also paid premium fees  
16 and other incentives to mortgage brokers who signed up the riskiest borrowers. Fueled by spiraling profits to  
17 Chase, WaMu, and other banks, common law principles of contract formation, customary underwriting  
18 practices, and statutory procedures for transferring interests in real property, including the recordation of  
19 transfers of interests in real property, disintegrated and the system ceased to function as a reliable means to  
20 transfer clear title to property.

21 131. WaMu expected that Plaintiff would not perform as merely one victim in a scheme in which:

22 132. Plaintiff's participation in the mortgage contract was procured by overt and covert misrepresentations and  
23 nondisclosures. The parties did not share a single expectation with respect to any of the terms of the mortgage  
24 contract and therefore the contract was void *ab initio*.

25 133. No enforceable contract was formed between Plaintiff and WaMu, so his Note and DOT were never assets  
26 of WaMu that could be acquired or assumed by Chase from the Federal Deposit Insurance Corporation  
27 (FDIC) as receiver after WaMu was seized by the Office of Thrift Supervision on September 25, 2008.

28 134. Plaintiff requests a judicial determination that the contract was void *ab initio* and unenforceable.

**NINTH CAUSE OF ACTION  
(ACCOUNTING)  
(against all defendants and Does 1-50)**

135. Plaintiff incorporates allegations in the preceding paragraphs by reference as though set forth in full.

136. On August 9, 2011 CWRC/LLP/MGC caused to be recorded in the Santa Barbara County Recorder's Office a Notice of Default which recited that plaintiff owed \$73,351.90 signed by with robosigner stamp of Marco Marquez. (Exh. B6). It recited: By LSI Title Company, as agent. The LSI company is not in good standing with the State of California. (see Exh. L) Not surprisingly LSI was cited for insurance violations of CCR §2694a5 (failed to respond to allegations) and CIC §880 (failed to use its own name)

137. Amazingly, only two months later on Oct. 13, 2011 a subsequent Notice of Default was filed which recited that plaintiff owed \$91,754.18. (Exh. B7) It belies logic to believe that \$18,000.00 could be added in only two months when plaintiff's monthly payments were a little over \$5,000. This subsequent notice had a different stamp at the bottom with yet another robosigner Vangie Ortega "serviceLink, as agent." (Exh. B8)

138. Both of the above notices were signed by persons who had no personal knowledge of what was owed in contravention to the purpose of the statute which requires the affidavit. It was enacted to make sure the amount recited to cure the default is accurate and not fraudulently inflated with illegal fees and penalties.

139. Due to these irregularities, and suspected forgeries, and the likelihood these amounts are not accurate, plaintiff is entitled to a full accounting from all loan servicers and/or lenders from September 25, 2005 until the present day of all amounts paid by plaintiff, all charges, etc. so that plaintiff can determine what he is entitled to by way of restitution for various causes of action herein. Plaintiff requests accounting as follows:

1. An accounting as to all money received by any loan servicer or lender (9-25-05 – to date)
2. An accounting as to money on hand.
3. An accounting as to all money disbursed.
4. An accounting as to all accounts outstanding and due.
5. An accounting by the trustee DB as to how much was paid to investors from AR-13 REMIC trust



1 WHEREFORE, Plaintiff requests judgment as follows:

2 1. That this court issue a Temporary Restraining Order and Preliminary Injunction restraining Defendants,  
3 and each of them, during the pendency of this action, from continuing with their efforts to conduct a Trustee's  
4 Sale of the 1200 Palomino Property, and that a permanent injunction to forever restrain defendants from  
foreclosing or attempting to sell 1200 Palomino.

5 2. That the attempted foreclosure of the Palomino Property be declared illegal and void; and that Defendants  
6 be forever enjoined and restrained from selling the Palomino Property or attempting to sell it or causing it to be  
7 sold, either under power of sale pursuant to trust deed or by foreclosure action, and from posting, publishing, or  
recording any notice of default or notice of trustee's sale contrary to state or federal law.

8 3. That the underlying loan transaction be declared void as a result of Defendants' misrepresentations, fraud,  
concealment, and predatory loan practices.

9 4. That Defendants make restitution to Plaintiff according to proof for payments made to MGC that were not  
10 deposited in the account of the actual lender; i.e. the certificate holders in the trust as alleged.

11 5. Actual damages for depreciation to the Property in excess of \$100,000.00 and related costs

12 6. General and compensatory damages

13 7. For punitive damages under Civil Code §3294 and treble damages under CC §3345.

14 8. For a judgment determining that Plaintiff is owner in fee simple of the 1200 Palomino Property against  
15 the adverse claims of Defendants and that Defendants have no interest in the subject property adverse to Plaintiff.

16 7. For attorney fees under Civil §1717, Civil1021.5; and attorney fees under Welt & Inst. §15657(a).

17 8. For interest, including pre-judgment interest where authorized.

18 9. For all costs authorized under the law.

19 10. For any and all other and further relief that may be just in this matter.

20 DEMAND FOR JURY TRIAL :

21 Plaintiff demands a jury trial on all causes of action and for all damages.

22  
23 **NOTICE:** Plaintiff demands that all defendants take notice of Penal Codes §§115, 132,133, 134,135

24 These codes make it a crime (either felony or misdemeanor) to enter any document into a proceeding  
25 which is forged, altered, back-dated, fabricated, or fraudulently altered in any way. It is also a crime to prepare  
any document to offered into this proceeding which violates any of these sections. The full text is included.  
This notice provides the “mens rea” need to satisfy the intent element needed for prosecution of the crime.

26 **Penal Code § 115**

27 (a) Every person who knowingly procures or offers any false or forged instrument to be filed, registered, or recorded in any  
28 public office within this state, which instrument, if genuine, might be filed, registered, or recorded under any law of this state  
or of the United States, is guilty of a felony.

1 (b) Each instrument which is procured or offered to be filed, registered, or recorded in violation of subdivision (a) shall  
2 constitute a separate violation of this section.

3 (c) Except in unusual cases where the interests of justice would best be served if probation is granted, probation shall not be  
4 granted to, nor shall the execution or imposition of sentence be suspended for, any of the following persons:

5 (1) Any person with a prior conviction under this section who is again convicted of a violation of this section in a separate  
6 proceeding.

7 (2) Any person who is convicted of more than one violation of this section in a single proceeding, with intent to defraud  
8 another, and where the violations resulted in a cumulative financial loss exceeding one hundred thousand dollars (\$100,000).

9 (d) For purposes of prosecution under this section, each act of procurement or of offering a false or forged instrument to be  
10 filed, registered, or recorded shall be considered a separately punishable offense.

11 **Penal Code § 132**

12 Every person who upon any trial, proceeding, inquiry, or investigation whatever, authorized or permitted by law, offers in  
13 evidence, as genuine or true, any book, paper, document, record, or other instrument in writing, knowing the same to have  
14 been forged or fraudulently altered or ante-dated, is guilty of felony.

15 **Penal Code § 133**

16 Every person who practices any fraud or deceit, or knowingly makes or exhibits any false statement, representation, token, or  
17 writing, to any witness or person about to be called as a witness upon any trial, proceeding, inquiry, or investigation  
18 whatever, authorized by law, with intent to affect the testimony of such witness, is guilty of a misdemeanor.

19 **Penal Code § 134**

20 Every person guilty of preparing any false or ante-dated book, paper, record, instrument in writing, or other matter or thing,  
21 with intent to produce it, or allow it to be produced for any fraudulent or deceitful purpose, as genuine or true, upon any trial,  
22 proceeding, or inquiry whatever, authorized by law, is guilty of felony.

23 **Penal Code § 135**

24 Every person who, knowing that any book, paper, record, instrument in writing, or other matter or thing, is about to be  
25 produced in evidence upon any trial, inquiry, or investigation whatever, authorized by law, willfully destroys or conceals the  
26 same, with intent thereby to prevent it from being produced, is guilty of  
27 a misdemeanor.

28 **NOTICE: ALL DEFENDANTS MUST VERIFY THEIR ANSWERS** pursuant to CCP §446

Plaintiff will move to strike any answer which has not been verified under penalty of perjury as mandated.

1  
2  
3  
4 Date:

1/31/2012

By:



Nancy Duffy McCarron

Law Office of Nancy Duffy McCarron

950 Roble Lane

Santa Barbara, CA 93103

10 VERIFICATION

11 I, DAVID GATES, as trustee for the David W. Gates Trust dated August 5, 1996 declare:

12  
13 I am plaintiff in the within action. I have read the complaint in its entirety and declare, under penalty of  
14 perjury and the laws of this state, the allegations set forth therein are based on personal knowledge, except as to  
15 those allegations made on information and belief and as to those allegations I believe them to be true.

16 Executed on January 31, 2012.

17  
18  
19  
20 

21 DAVID GATES, as trustee for the David W. Gates Trust  
22 dated August 5, 1996

## EXHIBIT LIST

- A Valid Chain of Title Docs
- B Fraudulent Recorded Docs
- C Securitization of Mortgage Backed Securities (MBS)
- D Securitization of GATES loan
- E WaMu Deutsche Fraud – US Financial Crisis
- F MGC Mortgage Inc. Docs
- G Deutsche Bank Docs
- H FDIC - Deutsche -Wamu - Chase Docs
- I WaMu Bankruptcy Docs
- J FHA Docs
- K Appendix – Codes
- L LSI violations
- M Class Action Against Chase for fabricating assignments of trust deeds

these exhibits are available by request to: [nancyduffysb@yahoo.com](mailto:nancyduffysb@yahoo.com)  
they will be emailed to the requestor