

1 Stacy, whose firsthand affidavit is attached as an exhibit.

2 307. Stacy states that she was frustrated in conversations in regards to Loan
3 Modification while the Caller was demanding payment to satisfy the debt. Stacy demanded
4 personal meetings, and the Caller did not respond to these demands. Instead, Stacy states that
5 the callers often spoke very rapidly, at a rate of several words per second, and that their words
6 were so rapidly stated that she did not understand them.

7 308. Many of these contacts included offers to negotiate for a Loan Modification,
8 and often when these discussions occurred, the telephone Caller always found an excuse to
9 deny the Loan Modification. When these calls were received, Plaintiff and his wife were
10 confused by the intent of the telephone calls, and did not understand whether or not the call
11 was in regards to a Loan Modification.

12 309. In one conversation, Stacy states that the Caller demanded to be informed of
13 the balance of the assets and to send them all to the bank. Stacy did not know if BANK OF
14 AMERICA CORPORATION would agree not to foreclose if the funds were delivered.

15 310. Plaintiff was present and overheard over the speaker phone when Stacy asked
16 if a payment would result in cancellation of the foreclose, and Plaintiff overheard the response
17 on the speaker that the Caller refused to agree that foreclosure would be cancelled if the funds
18 were presented.

19 311. Plaintiff and his wife possessed assets which could have been liquidated and
20 paid to BANK OF AMERICA CORPORATION, if such payment would have resulted in a
21 cancellation of the foreclosure.

22 23 **X. PLAINTIFF EXHAUSTED ADMINISTRATIVE REMEDIES**

24 25 **1. INTRODUCTION**

26 **Supporting Authorities**

27 Title 12 U.S.C. §2605 (i)(2) and (3) Servicing of mortgage loans and administration of
28 escrow accounts

1 12 U.S.C. §2605(e)(1) Servicing of mortgage loans and administration of escrow
2 accounts. (e) Duty of loan servicer to respond to borrower inquiries.

3 Title 12 U.S.C. §2605 (e)(2)(A) make appropriate corrections in the account [...]

4 Title 12 U.S.C. §2605 (e)(2)(B)(ii)

5 Title 12 U.S.C. §2605 (e)(2)(C)(ii)

6 15 U.S.C. §1641, *Liability of assignees*. Upon written request by the obligor, the
7 servicer shall provide the obligor, to the best knowledge of the servicer, with
8 the name, address, and telephone number of the owner of the obligation or the
9 master servicer of the obligation.

10 15 U.S.C. §1641(f)(2), which obligates the Loan Servicer to notify the Borrower of a
11 transfer of the Promissory Note,

12 15 U.S.C. §1641 (g), which obligates the new Note Holder to notify the Borrower of a
13 transfer of the Promissory Note, and

14 U.C.C. §3-401 (a) A person is not liable on an instrument unless (1) the person signed
15 the instrument[.]

16 U.C.C. §3-501 (b)(2) Upon demand of the person to whom presentment is made, the
17 person making presentment shall

18 (i) exhibit the instrument,

19 (ii) give reasonable identification and, if presentment is made on behalf of
20 another person, reasonable evidence of authority to do so, and

21 (iii) sign a receipt on the instrument for any payment made or surrender the
22 instrument if full payment is made.

23 U.C.C. §3-501(b)(3) Without dishonoring the instrument, the party to whom
24 presentment is made may

25 (i) return the instrument for lack of a necessary indorsement, or

26 (ii) refuse payment or acceptance for failure of the presentment to comply with
27 the terms of the instrument, an agreement of the parties, or other applicable law
28 or rule [such as a presentment made by party who refuses to give reasonable
identification or reasonable evidence of authority to do so].

Cal. Civ. Code §2937 (a). The Legislature also finds that notification to the borrower
or subsequent obligor of the transfer may protect the borrower or subsequent
obligor from fraudulent business practices and may ensure timely payments.

Cal. Civ. Code §1558. It is essential to the validity of a contract, not only that the
parties should exist, but that it should be possible to identify them.

1 **Supporting Contract**

2 Promissory Note, BORROWER'S PROMISE TO PAY. I will make all payments
3 under this Note[.]

4 Deed of Trust, page 1, DEFINITIONS, (A) "Security Instrument" means this
5 document[.]

6 Deed of Trust, DEFINITIONS, (F) "Note" defines: ' "Note" means the promissory
7 note signed by Borrower and dated APRIL 5, 2005. The Note states that
8 Borrower owes Lender' [the loan amount .]

9 Deed of Trust, DEFINITIONS, (H) "Loan" defines: "Loan" means the debt evidenced
10 by the Note. The Term "Note" is defined at DEFINITIONS, (F) "Note."

11 **Supporting Memoranda**

12 Memorandum 1. Plaintiff is not liable on an instrument unless he signed it.

13 Memorandum 3. The Note Holder, having possession of the indorsed Promissory
14 Note, is entitled to enforce the Note.

15 Memorandum 11. HILLSBOROUGH CORPORATION does not exist; it is a null
16 Lender; and, Lender is void.

17 **Reasonable Question: The Promissory Note may have been transferred into a**
18 **"pool."**

19 312. Plaintiff alleges there is cause to demand the identity of the Note Holder
20 because (1) Lender HILLSBOROUGH CORPORATION is the only party of the official
21 public record who might still be interested [excluding invalid transfers of interest in the Deed
22 of Trust after the QWR], and (2) there is question that the Promissory Note is both "pooled"
23 and separated from the Deed of Trust, as detailed below.

24 313. The Deed of Trust bears a MIN number which is assigned by MORTGAGE
25 ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS"), and MERS maintains a
26 database indexed by that MIN which enables them to track the location of the Promissory
27 Note, without recordation of any transfers on the official public record of San Joaquin
28 County, it is both possible and profitable that the Promissory Note could be "pooled" as
29 security to mortgage-backed securities, and without attachment of the Deed of Trust.

30 314. Plaintiff alleges that the electronic tracking of interest in the Deed of Trust,

1 without it being attached to the Promissory Note, could cause a separation of the Deed of
2 Trust and the Promissory Note.

3 315. In the “pool” or in any other holding location, the investor(s) is/are the Note
4 Holder.

5 316. If the Defendants could control the pool of Notes, then they would not be at
6 arm’s length, and the investors would really not own them.

7 317. In this investment scheme, Plaintiff questions any possible suggestion that
8 Defendant BAC HOME LOAN SERVICING, LP could be the Servicer for that “pool.” If
9 BAC HOME LOAN SERVICING, LP is not the Loan Servicer, as defined under RESPA at
10 12 U.S.C. §2605(i) *Definitions* (2) *Servicer*, then BAC HOME LOAN SERVICING, LP has
11 falsely personated this party, and abused RESPA.

12 318. QWR demanded that if BANK OF AMERICA CORPORATION is a Loan
13 Servicer, that they produce evidence of being the Loan Servicer, and identify the Creditor.

14 319. All Defendants were silent and in administrative default to this demand.

15 **Statement of Facts**

16
17 320. The Qualified Written Request (“QWR”) pursuant to 12 U.S.C. §2605(e),
18 dated July 19, 2010, invokes U.C.C. §3-501 (b)(2) to demand verification and validation of an
19 alleged debt, in response to billing presentments made by BAC HOME LOAN SERVICING,
20 LP.

21 321. In addition to U.C.C. §3-501 (b)(2), Title 15 U.S.C. §1641(f)(2), *Liability of*
22 *assignees*, obligates the Loan Servicer BAC HOME LOAN SERVICING, LP to identify the
23 owner of the obligation. The new Note Holder was obligated to notify the Plaintiff within 30
24 days, pursuant to 15 U.S.C. §1641 (g); and, Cal. Civ. Code §2937(a) expresses the intent of
25 the California Legislature to notify the Borrower when the Promissory Note is transferred.

26 322. If the parties default to identify the Note Holder, The Cal. Civ. Code §1558
27 invalidates the contract, and the Plaintiff has a remedy. It is impossible for the Plaintiff to
28 make payments on a Loan for which the identity of the Note Holder is a secret. It is likewise

1 impossible to validate the Loan Servicer as a party.

2 323. A person who receives a billing demand is entitled to verification pursuant to
3 U.C.C. §3-501 (b)(2), from the party who makes the demand. U.C.C. §3-501 (b)(2) does not
4 contain a time element. The alleged Creditor is not be entitled to receive payment until the
5 Debtor receives a satisfactory response. U.C.C. §3-501 (b)(3).

6 324. Plaintiff's demand is reasonable.

7 324.a. In a commercially honorable response, BAC HOME LOAN
8 SERVICING, LP could have identified the Note Holder who has
9 assigned Loan Servicing to BAC HOME LOAN SERVICING, LP.
10 In turn, Plaintiff could have made the same demand to that Note
11 Holder to cause the Promissory Note to be available for inspection.

12 324.b. When the new Creditor invests in possession and ownership of the
13 Promissory Note, this investor accepts every contractual
14 agreement that carries with the Note.

15 324.c. Plaintiff is not liable for the inconvenience of determining the
16 location of the Promissory Note if it is a security for a mortgaged-
17 backed security.

18 324.d. Plaintiff is not liable for the inconvenience of "pooling."

19 324.e. The Promissory Note is subject to inspection in the normal and
20 customary conduct of business to validate the debt which it
21 represents.

22 325. In summary, alleged Loan Servicer BAC HOME LOAN SERVICING, LP is
23 obligated to identify the Note Holder, pursuant to U.C.C. §3-501 (b)(2)(ii), 15 U.S.C. §1641
24 (f)(2), 15 U.S.C. §1641 (g), 15 U.S.C. §1692g (a, and b), and Cal. Civ. Code §2937 (a), and
25 provide reasonable evidence of authority to represent the Note Holder.

26
27 **2. First Qualified Written Request.**

28 326. Plaintiff demanded in QWR that BANK OF AMERICA CORPORATION

1 provide the opportunity for Plaintiff to inspect the original wet-ink Promissory Note and Deed
2 of Trust pursuant to U.C.C. §3-501(b)(2)(i and ii) , to prove that BANK OF AMERICA
3 CORPORATION (as its subsidiary BAC HOME LOAN SERVICING, LP) is either the
4 Holder in Due Course of these instruments, or is in possession of authority from the entity that
5 is the Note Holder. Plaintiff elaborated that if BANK OF AMERICA CORPORATION is
6 only a Loan Servicer, that they provide such written authorization.

7 327. Plaintiff also demanded that BANK OF AMERICA CORPORATION provide
8 an affidavit stating by firsthand knowledge that BANK OF AMERICA CORPORATION is a
9 creditor following Generally Accepted Accounting Principles (GAAP), whereby true double
10 entry book accounting was followed to issue the Loan; and, that a debit was made against the
11 bank's assets as a result of the Loan.

12 328. Plaintiff served BANK OF AMERICA CORPORATION because the
13 trademark symbol on BAC HOME LOAN SERVICING, LP letterhead and envelopes read,
14 "BANK OF AMERICA HOME LOANS," and BANK OF AMERICA CORPORATION is
15 the parent corporation. Notice to Principal is notice to Agent.

16 329. BANK OF AMERICA CORPORATION was granted twenty-one (21)
17 business days to present to Borrower proof of claim as requested in Qualified Written Request
18 ("QWR") which was sent by Certified Mail Number 7009 3410 0000 6765 3267, and
19 delivered on July 19, 2010. (**EXHIBIT E**).

20 330. US Mail from the corporate fiction BANK OF AMERICA CORPORATION,
21 BAC HOME LOAN SERVICING, LP, was received.

22 330.a. Contents of US Mail envelope were void of human name,
23 signature, oath, or any certification of authenticity. Notary Public
24 could not certify this US Mail as a response because it did not
25 contain a signature that was given before a Notary, and the letter
26 did not offer to inspect any original documents. The copies
27 enclosed were not even certified.

28 i. Plaintiff had appeared before a Notary Public to authenticate the

1 signature on the QWR as being that of the Plaintiff. (EXHIBIT F)

2 ii. Plaintiff's signature on QWR bears liability for the content of the

3 document.

4

5 iii. Plaintiff is entitled to equal liability in the response.

6 330.b. US Mail was received with printed meter postage in lieu of

7 stamps. Contents of envelope purported to validate a debt by

8 claiming to settle the QWR.

9 331. Uncertified letter from corporate fiction BAC HOME LOAN SERVICING, LP

10 provided irrelevant statements. Plaintiff now understands that BAC HOME LOAN

11 SERVICING, LP is only a Loan Servicer. They should NOT be in possession of the

12 Promissory Note, or the Deed of Trust. Nevertheless, BAC HOME LOAN SERVICING, LP

13 states that they decline to allow inspection, and "In lieu of allowing inspection of the "original

14 copy of the Note, we have enclosed herewith a true and correct copy of the original[.]"

15 (EXHIBIT G)

16 332. Plaintiff notes the following features of the photographic image in the

17 envelope:

18 332.a. that there was an alteration on the upper-right corner of the

19 photographic reproduction. (EXHIBIT G. detail 13)

20 332.b. that the text reads as follows:

21 LOAN NO. 0614789

22 MIN: 100197900001703752

23 APRIL 5, 2005

24 BORROWER'S PROMISE TO PAY.

25 In return for a loan that I have received [...]

26 I promise to pay [payment amount] to the order of Lender. Lender

27 is

28 HILLSBOROUGH CORPORATION, A NEVADA CORPORATION.

1 I will make all payments under this Note[.] Emphasis: "this Note."
2 I understand that Lender may transfer this Note.

3 333. BANK OF AMERICA CORPORATION, BAC HOME LOAN SERVICING,
4 LP did not identify the Note Holder.

5 334. BANK OF AMERICA CORPORATION, BAC HOME LOAN SERVICING,
6 LP did not provide an affidavit which stated that the accounting for the Loan follows
7 Generally Accepted Accounting Principles.

8
9 **3. Opportunity to cure fault for Qualified Written Request - Second request.**

10 335. On August 09, 2010, Plaintiff sent notices to all known interested parties, that
11 BANK OF AMERICA CORPORATION is in fault, and Plaintiff granted to all parties,
12 including BANK OF AMERICA CORPORATION, an opportunity to respond to the same
13 demands as the QWR.

14 336. Plaintiff sent these notices by US Mail, with the following Certified Mail
15 Numbers:

16
17 7009 3410 0000 6765 3274: BANK OF AMERICA CORPORATION

18 7009 3410 0000 6765 3335: MORTGAGE ELECTRONIC REGISTRATION
19 SYSTEMS, INC., FLINT, MI, forwarded to OCALA, FL

20 7009 3410 0000 6765 3366: HILLSBOROUGH CORPORATION

21 7009 3410 0000 6765 3342: PLACER TITLE COMPANY

22
23 7009 3410 0000 6765 3373: MORTGAGE ELECTRONIC REGISTRATION
24 SYSTEMS, INC., OCALA, FL

25 337. All of these notices were delivered to the parties by August 16, 2010, except
26 Lender HILLSBOROUGH CORPORATION, whose mail was returned. The returned mail
27 from Lender HILLSBOROUGH CORPORATION was sent pursuant to the address in the
28 Deed of Trust.

1 338. None of the parties provided an affidavit to state that the accounting for the
2 Loan follows Generally Accepted Accounting Principles.

3 339. Defendants failed to identify the Note Holder who possesses the Promissory
4 Note.

5
6 **4. NOTICE OF LENDER'S ADMINISTRATIVE DEFAULT.**

7 340. NOTICE OF LENDER'S ADMINISTRATIVE DEFAULT was served to all
8 parties by Notary presentment, notifying the parties that they are in default, granting three (3)
9 days to respond. Reference **EXHIBIT L, EXHIBIT M. detail 1, AFFIDAVIT OF**
10 **NOTARY PRESENTMENT,, and EXHIBIT M. detail 2, AFFIDAVIT OF NOTARY**
11 **PRESENTMENT, CERTIFICATION OF MAILING: Presentment to BAC HOME LOAN**
12 **SERVICING, LP**

13 341. The Notary Acceptor Marc Francis Giusto sent these notices by US Mail, with
14 the following Certified Mail Numbers:

15 7009 3410 0000 4413 2211: BANK OF AMERICA CORPORATION c/o C T
16 CORPORATION SYSTEM [Agent for service of process]

17 7009 3410 0000 4413 2228: MORTGAGE ELECTRONIC REGISTRATION
18 SYSTEMS, INC. c/o GENPACT REGISTERED AGENT, INC. [Agent for
19 service of process]

20 7009 3410 0000 6765 3472: HILLSBOROUGH CORPORATION

21 7009 3410 0000 4413 2204: PLACER TITLE COMPANY c/o PATRICIA
22 AINA LAFFIN [Agent for service of process]

23 7009 3410 0000 4413 2181: RECONTRUST COMPANY c/o ANA RAZO,
24 TS No. 10-0119244, Title Order No. 10-8-439734 [agent who recorded
25 documents on public record]

26 342. Additionally, the Notary Acceptor sent the following to assure that BAC
27 HOME LOAN SERVICING, LP was served:
28

1 7009 3410 0000 4413 2266: BAC HOME LOAN SERVICING, LP. c/o C T
2 CORPORATION SYSTEM [Agent for service of process]

3 343. All of these notices were delivered to the parties by November 05, 2010,
4 except Lender HILLSBOROUGH CORPORATION, whose mail was returned. The parties
5 were granted three (3) days to respond, which expired on November 16, 2010.

6
7 **5. NOTARY AFFIDAVIT OF NON-RESPONSE**

8 344. The QWR directed the Defendants to respond to Notary Acceptor Marc
9 Francis Giusto as a third party witness who is bound by public oath, and who would certify
10 the response.

11 345. The Notary Acceptor did not receive an affidavit which certified the Loan as
12 following Generally Accepted Accounting Principles.

13 346. The Notary Acceptor did not receive any statement which identified the Note
14 Holder.

15 347. The Notary Public could have certified the appearance of the Defendants and
16 the Plaintiffs for the purpose of inspecting original documents, as a Notary deposition, if the
17 Defendants had agreed to make the documents available for inspection. No such opportunity
18 was allowed.

19 348. If the Defendants had submitted any other affidavit of truth, the Notary
20 Acceptor would have certified that affidavit.

21 349. If the Defendants had submitted any offer to inspect any document [including
22 an offer to inspect the original Promissory Note and the Deed of Trust], the Notary Acceptor
23 could have accepted an appointment to make an appearance.

24 350. By the Notary Affidavit of Non-Response, the Notary Acceptor Marc Francis
25 Giusto certifies that the Defendants did not respond to the NOTICE OF LENDER'S
26 ADMINISTRATIVE DEFAULT, or to any other items of mail that were in response to
27 Daniel Hutchins' mail, which might have been sent ⁶⁸ prior to the NOTICE OF LENDER'S

28

⁶⁸ The Notary Public does not have firsthand knowledge that Daniel Hutchins sent mail.

1 ADMINISTRATIVE DEFAULT [which was the QWR].

2 351. Notary Affidavit of Non-response mentions non-certifiable items of mail that
3 were received but were void of human name, oath and signature, and did not offer an
4 opportunity to inspect original [certifiable] documents. (**EXHIBIT N, Notary Affidavit of**
5 **Non-response.**)

6
7 **6. Default Agreements.**

8 352. The Defendants who were served, exhausted their administrative remedies and
9 agree by administrative default and tacit procuration, as follows:

10 1. None of the notified parties are the Note Holder of the Promissory
11 Note; and, they are NOT interested parties. None of the notified parties
12 have standing.

13 1.a. BANK OF AMERICA Home Loans [BAC HOME
14 LOAN SERVICING, LP] is NOT a Loan Servicer.

15 i. The Note Holder is NOT identified.

16 ii. The Holder in Due Course of the Deed of Trust is
17 NOT identified; and, it follows the alleged Loan,
18 which is void.

19 iii. BANK OF AMERICA Home Loans does NOT
20 possess written authorization from the unidentified
21 Note Holder to service the alleged Loan.

22 2. Daniel Hutchins did not receive the alleged Loan.

23 2.a. None of the transactions were made in accordance with
24 Generally Accepted Accounting Principles (GAAP),
25 whereby true double entry book accounting was
26 performed to issue the alleged Loan.

27 2.b. The Lender did not experience a debit against its own
28 assets to give Daniel Hutchins the alleged Loan.

3. The alleged Loan does NOT exist.
4. The parties do NOT have an interest in the Promissory Note and/or the Deed of Trust.
5. The Promissory Note does NOT bear a chain of indorsements that gives BANK OF AMERICA CORPORATION authority to receive payments.
6. Daniel Hutchins did NOT receive a Loan in accordance with Generally Accepted Accounting Principles.
7. The alleged Loan was NOT debited from the Lender's own assets.
8. The Beneficiary of the Deed of Trust, determined by identification of the Lender, does NOT exist.
9. MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., whose original assignment as Beneficiary was determined by nomination from the Lender, is NOT the Beneficiary of the Deed of Trust; therefore, it has no authority to assign that which it does not possess.
10. BANK OF AMERICA CORPORATION's statement that the Deed of Trust is in full force and effect is hearsay.
11. Pursuant to [in violation of] the requirements of Title 15 U.S.C. §1692g(a)(2), the Borrower is denied the identity of the Creditor.

XI. JUDICIAL NOTICE

353. Plaintiff moves this Honorable Court to take Judicial Notice under the Federal Rules of Evidence 201 (d) of the following:

1. Carpenter v. Longan, 83 U.S. 271 (1872), 21 L.Ed. 313, 16 Wall. 271.

In Carpenter v. Longan the United States Supreme Court held:

"The note and mortgage [Deed of Trust] are inseparable; the former as essential, the latter as an incident. An assignment of the note

1 carries the mortgage [Deed of Trust] with it, while an assignment of
2 the latter alone is a nullity.”

3 1.a. It is material to this case who is currently the Real Party
4 in Interest on the Promissory Note, as they alone have
5 standing to enforce. Therefore, the governing body of
6 law in this civil action must be under the Uniform
7 Commercial Code, as it pertains to the right of
8 enforcement of the Promissory Note.

9 2. In *Omychund v Barker* (1745) 1 Atk, 21, 49; 26 ER 15, 33, Lord
10 Harwicke stated that no evidence was admissible unless it was
11 "the best that the nature of the case will allow"; and, Federal Rule of
12 Evidence 1002, Requirement of Original, appears to be in accordance.

13 2.a. Some of the issues before this Honorable Court require
14 examination of the original in order to identify the Note
15 Holder who has taken the Note by transfer and is
16 entitled to receive payments under this Note. The
17 original Promissory Note was payable to the order of
18 Lender HILLSBOROUGH CORPORATION.
19 Promissory Note is not a bearer instrument. It is
20 payable to the order of the Lender, not the Defendants.

21 2.b. The Note Holder who is entitled to enforce pursuant to
22 U.C.C. §§3-301, and 3-302 must be the party to whom
23 the Note is transferred by the Lender's indorsement, and
24 by physical delivery, pursuant to U.C.C. §§3-201, 3-
25 203, and 3-204.

26 2.c. If the Promissory Note does not exist, the debt is
27 discharged pursuant to U.C.C. §3-604; or, if the Promise
28

1 is altered on the face of the Note, the obligation of the
2 Borrower is discharged as well.

3 2.d. Presentation of a photocopy is unfair to the plaintiff,
4 because it does not prove the identity of the Note
5 Holder; if this Honorable Court mistakenly awards an
6 interest in the Promissory Note to the wrong party, it
7 would be possible that the Plaintiff could be held
8 accountable twice; and, Plaintiff and Lender agreed
9 through the phrase, "this Note," that the Plaintiff would
10 only be held accountable under the original document.

11 3. The United States Supreme Court, in *Haines v Kerner* 404 U.S. 519
12 (1972), ruled that all pro se litigants must be afforded the "opportunity
13 to offer supporting evidence, however inartfully pleaded," and the
14 Court held the "allegations of the pro se complaint, to less stringent
15 standards than formal pleadings drafted by lawyers." Plaintiff
16 respectfully moves this Honorable Court to hold the *in propria persona*
17 Plaintiff to less stringent standards.

18 4. In *Platsky v CIA*, 953 F.2d 26 (2nd Cir. 1991), the Circuit Court of
19 Appeals ruled that "it would have been appropriate for the district judge
20 to explain the correct form to the pro se plaintiff so that Platsky could
21 have amended his pleadings accordingly." Plaintiff respectfully moves
22 this Honorable court to an opportunity to amend this complaint, and
23 moves this Honorable Court to explain the correct form.

24 5. Plaintiff motions this Honorable Court to notice the below-listed
25 sections of Title 15, which shows that the Promissory Note, which did
26 not mature within nine months, is a security, and there are civil
27 penalties for violations of United States laws which govern securities.
28

1 This litigation has resulted from false and misleading statements in
2 transactions involving the Promissory Note which is a security.

3 5.a. § 78aa. Jurisdiction of offenses and suits.

4 The district courts of the United States and the United States courts
5 of any Territory or other place subject to the jurisdiction of the
6 United States shall have exclusive jurisdiction of violations of this
7 chapter [CHAPTER 2B—SECURITIES EXCHANGES] or the
8 rules and regulations thereunder,

8 5.b. 15 U.S.C. §78c. (a) Definitions and application.

9 (10) The term “security” means any note [...] ; but shall not include
10 currency or any note, draft, bill of exchange, or banker’s acceptance
11 which has a maturity at the time of issuance of not exceeding nine
12 months[.]

12 5.c. 15 U.S.C. §77b. (a) *Definition.*

13 (1) The term “security” means any note [...] [same as §78c (a)(10)]

14 5.d. 15 U.S.C. §78ff *Penalties, (a) Willful violations; false*
15 *and misleading statements.*

16 Any person who willfully violates any provision of this chapter [...]
17 shall upon conviction be fined not more than \$5,000,000, or
18 imprisoned not more than 20 years, or both, except that when such
19 person is a person other than a natural person, a fine not exceeding
20 \$25,000,000 may be imposed;

21 6. Plaintiff moves this honorable Court to take judicial notice of a
22 *collateral estoppel* to the Qualified Written Request (“QWR”), for all
23 Defendants, as delineated in Section X, *PLAINTIFF EXHAUSTED*
24 *ADMINISTRATIVE REMEDIES.*

25 **Elements of collateral estoppel by acquiescence.**

26 6.a. Notice.

27 **EXHIBIT E. Qualified Written Request**
28

1 **EXHIBIT F. NOTICE OF FAULT, NOTICE: SECOND**
2 **REQUEST FOR VERIFIED PROOF OF CLAIM,**
3 **OPPORTUNITY TO CURE**

- 4 i. Plaintiff served QWR was presented to BANK OF
5 AMERICA CORPORATION, parent corporation of
6 BAC HOME LOAN SERVICING, LP. Notice to
7 Principal is Notice to Agent.
8 ii. Plaintiff served NOTICE OF FAULT, NOTICE:
9 SECOND REQUEST FOR VERIFIED PROOF OF
10 CLAIM, OPPORTUNITY TO CURE to all parties
11 at the addresses that are specified under Deed of
12 Trust, to BANK OF AMERICA CORPORATION;
13 and a duplicate presentment was given to MERS at
14 an extra address in Ocala, Florida..

15 **EXHIBIT M. NOTICE OF LENDER'S ADMINISTRATIVE**
16 **DEFAULT**

- 17 iii. NOTICE OF LENDER'S ADMINISTRATIVE
18 DEFAULT was presented by Notary Public to the
19 agent for service of process, as filed at the California
20 Secretary of State, excepting RECONTRUST
21 COMPANY, N.A., which is a subsidiary of BANK
22 OF AMERICA CORPORATION, whose filing with
23 California Secretary of State, if it exists, was not
24 found. Two addresses for RECONTRUST
25 COMPANY, N.A. were used, including the address
26 given on the public record for recordation of
27 foreclosure documents. A second, duplicate
28 presentment was mailed to BAC HOME LOAN
 SERVICING, LP, which is a subsidiary of BANK

1 OF AMERICA CORPORATION, who was also sent
2 this notice.

3 iv. Plaintiff believes that he exercised due diligence
4 through the Notary Public to give service of process
5 to all interested parties.

6 v. Defendant RECONTRUST COMPANY, N.A.
7 joined this action after the QWR was already in
8 default. RECONTRUST COMPANY, N.A. is a
9 subsidiary of BANK OF AMERICA
10 CORPORATION, who received all notices of the
11 QWR administrative process. Notice to principal is
12 notice to agent.

13 **Obligation to respond**

14 6.b. Obligation to respond, pursuant to RESPA, 12 U.S.C.
15 2605(e)(2)(A, B and C), in addition to 15 U.S.C. §1641,
16 and U.C.C. §3-501(b)(i and ii).

17 6.c. Plaintiff is obligated to exhaust his administrative
18 remedies. 12 U.S.C. §2605 provides additional
19 obligation to the alleged Loan Servicer, BAC HOME
20 LOAN SERVICING, LP.

21 **Time to respond**

22 6.d. Plaintiff provided a reasonable time to respond. When a
23 presentment is made as a demand for payment, U.C.C. §3-501
24 does not provide a time element for the presenter to validate the
25 alleged debt. 12 U.S.C. §2605(e)(1), which requires twenty
26 business days for the Respondent to acknowledge receipt of the
27 QWR. All questions of the amount of time allowed are
28 resolved by Defendant BAC HOME LOAN SERVICING, LP

1 statements that it would refuse to respond, and none of the other
2 Defendants acknowledged that they had received the QWR.

3 6.e. In the Notice of Default, Plaintiff provided a set of
4 default responses in the event that the Defendants failed to
5 respond, and Defendants who were served were granted three
6 (3) additional days to respond.

7 **Third Party witness provided to respond.**

8
9 6.f. All presentment to parties included instructions to
10 respond to the Notary Acceptor.
11

12 **Certification of non-Response.**

13 6.g. EXHIBIT N. Notary Affidavit of Non-response certifies
14 the non-response. The Notary Acceptor is a third party witness
15 who holds an oath of office.
16

17 **XII. POINTS AT ISSUE**

18 **Issue 1.** Does this Honorable Court grant judicial notice of the QWR? If yes, the
19 default agreements contained therein answer the question of standing for the
20 Defendants, which supersede many of the following issues.
21

22 **Question of Standing.**

23 **Issue 2.** Who is the injured party that has standing to declare default?

24 **Issue 3.** Where is proof of the injury?

25 **Issue 4.** Is the Deed of Trust attached to the Promissory Note as its security?

26 **Issue 5.** Are the Defendants, or the undisclosed client that they allegedly represent, a
27 Creditor who followed Generally Accepted Accounting Principles ("GAAP"), who
28

1 debited its own assets in balance with a credit for the Plaintiff-Borrower, to give the
2 alleged loan as contractual consideration in exchange for the Promissory Note?

3 **Issue 6.** Are the Defendants obligated to certify the accounting for the debt as
4 evidenced by the Promissory Note, including the requirement under U.C.C. §3-
5 501(b)(2)(iii), which requires the Creditor to post payments of principal on the
6 Promissory Note, and including the accounting for the debit from the Creditor by
7 GAAP?

8 **Issue 7.** If the Defendants are acting only in the capacity of a Loan Servicer, do they
9 possess proof of authority to represent the Note Holder?

10 **Issue 8.** Do the Defendants have standing to receive periodic payments under the
11 Promissory Note if the Defendants refuse to identify the Note Holder, who is the
12 Investor and Creditor, and if the Defendants refuse to exhibit their proof of authority
13 to represent the Note Holder?

14 **Issue 9.** If the location of the Promissory Note is unknown or not disclosed, is the Deed
15 of Trust separated from the Promissory Note, as a nullity pursuant to *Carpenter v.*
16 *Longan* ⁶⁹, and are the Defendants authorized to execute this Security Instrument by
17 foreclosure on the Property?

18 **Issue 10.** Is BANK OF AMERICA CORPORATION, BAC HOME LOAN
19 SERVICING, LP the Note Holder and Holder in Due Course as an interested party?
20 The Promissory Note is NOT a bearer instrument. Promissory Note promises payment
21 to the order of HILLSBOROUGH CORPORATION, and Plaintiff is not aware of any
22 proof that the photocopy image mailed by BAC HOME LOAN SERVICING, LP is
23 indorsed by HILLSBOROUGH CORPORATION.

24 **Issue 11.** Is the Promissory Note properly indorsed for every transfer, commencing from
25 the original Lender HILLSBOROUGH CORPORATION, to the present Note Holder.
26

27
28

⁶⁹ *Carpenter v. Longan*, op. cit. Note 23.

1 **Issue 12.** Is every transfer of interest in both the Promissory Note and the Deed of Trust
2 duly acknowledged and recorded in the official public record of San Joaquin County
3 pursuant to Cal. Civ. Code §2932.5?

4 **Issue 13.** If the Defendants produce the Promissory Note in this Honorable Court, after
5 the Plaintiff exhausted his administrative remedies by the QWR, do the Defendants
6 have retroactive proof of possession?

7 **Issue 14.** Are the Defendants in violation of Cal. Civ. Code §2932.5, which obligates the
8 recordation of interest to receive payments under the Promissory Note, which is
9 secured by real property under the Deed of Trust?

10
11 **Issue of assignment of loan servicing**

12 **Issue 15.** Is BAC HOME LOAN SERVICING, LP in violation of the Fair Debt
13 Collections Procedures Act for its failure to validate the debt by identification of the
14 Creditor who is the Note Holder?

15 **Issue 16.** Is BAC HOME LOAN SERVICING, LP obligated to disclose the identity of
16 the Note Holder?

17 **Issue 17.** Were the Promissory Note and the Deed of Trust in the possession of BAC
18 HOME LOAN SERVICING, LP, or its client, when it billed under account number
19 091510614?

20
21 **defective notice of default.**

22 **Issue 18.** Did RECONTRUST COMPANY, N.A. have standing to declare default as
23 authorized agent for the ambiguously-identified beneficiary MERS, which acts solely
24 as nominee for the Lender, whom MERS did not identify, and for whom neither
25 RECONTRUST COMPANY, N.A. nor MERS offered any certification of authority to
26 represent. The Lender-assignee, if it is not HILLSBOROUGH CORPORATION, is
27 not identified.
28

1 **Issue 19.** Did MERS have standing under the Deed of Trust to become injured by lack of
2 payment under the Promissory Note, although the Deed of Trust is NOT a monetary
3 instrument, but only a security instrument, and MERS is not defined under the
4 Promissory Note.

5 **Issue 20.** On the Notice of Default, is it necessary for RECONTRUST COMPANY,
6 N.A. to identify the injured party for whom it claims to be the agent, for whom
7 RECONTRUST COMPANY, N.A. declared the alleged default?
8

9 **Defective substitution and assignment.**

10 **Issue 21.** Did MERS possess a beneficial interest in the Deed of Trust “solely as a
11 nominee” for a Lender [assignee], which it assigned to BAC HOME LOAN
12 SERVICING, LP?

13 **Issue 22.** Is the SUBSTITUTION OF TRUSTEE AND ASSIGNMENT OF DEED OF
14 TRUST a valid substitute the Trustee?

15 **Issue 23.** Is the SUBSTITUTION OF TRUSTEE AND ASSIGNMENT OF DEED OF
16 TRUST a valid assignment of interest in the Deed of Trust, which grants
17 RECONTRUST COMPANY, N.A. a power to conduct a Trustee Sale?
18

19 **Issue 24.** Is the transfer of interest in the Deed of Trust in SUBSTITUTION OF
20 TRUSTEE AND ASSIGNMENT OF DEED OF TRUST a nullity pursuant to
21 *Carpenter v. Longan* ⁷⁰ ?

22 **Issue 25.** Is MERS securitized as a beneficiary on the security for the Promissory Note
23 within the meaning of the contract contained within the Deed of Trust?

24 **Question of Debt validation.**

25 **Issue 26.** Did RECONTRUST COMPANY, N.A. validate the debt for which it declared
26 default?
27

28

⁷⁰ *Carpenter v. Longan*, op. cit. Note 23.

1 **Issue 27.** Is it necessary for RECONTRUST COMPANY, N.A. to validate the debt
2 before it forecloses?

3 **General**

4
5 **Issue 28.** Are all of the Defendants in full compliance with the law and with every
6 contractual provision of the Deed of Trust and the Promissory Note while they seek to
7 foreclose?

8 **Issue 29.** Is the Plaintiff entitled to a remedy for lack of knowledge and lack of
9 disclosure that servicing is assignable under the Promissory Note?

10
11 **XIII. DEFINITIONS**

12 **Applicable documents and property.**

13 Loan Number: 0614789, in HILLSBOROUGH CORPORATION

14 Property: within San Joaquin County, California:

15 LOT 35, AS SHOWN ON THAT CERTAIN MAP ENTITLED, "TRACT NO.
16 3265 LA MORADA UNIT NO. 20", FILED FOR RECORD MARCH 4 2004
17 IN BOOK 38 OF MAPS AND PLATS AT PAGE 96, OFFICIAL RECORDS
OF SAN JOAQUIN COUNTY.

18 PARCEL NO. 124-350-35

19 Property Address: 3021 Nicoletta Lane, Stockton, CA 95212

20 "Deed of Trust" and "Security Instrument": That original and certain DEED OF
21 TRUST, recorded as Document Number 2005-093768 in Official Records,
22 County of San Joaquin Assessor-Recorder-County Clerk, on April 21, 2005,
securing Promissory Note for \$345,000.00, in favor of Beneficiary, and
covering the following described property:

23 [See "Property"]

24 Deed of Trust: securitizes Promissory Note

25 signed by Borrower.

26 dated April 5, 2005, and is Notarized on April 11, 2005.

27 "Promissory Note," "Note," and "Debt Instrument": The original wet ink promissory
28 note and instrument dated April 5, 2005, which obligates Borrower to make
payments as defined therein, to the Note Holder of the instrument.

1 NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST,
2 Document No. 2010-125347, recorded September 23, 2010.

3 SUBSTITUTION OF TRUSTEE AND ASSIGNMENT OF DEED OF TRUST,
4 Document No. 2010-128706, recorded September 30, 2010.

5 **Terms used.**

6 **Borrower:** Plaintiff Daniel Hutchins, pursuant to Deed of Trust. By use of the term
7 "Borrower," Plaintiff does not agree or imply that he received a credit from the
8 Lender's assets, in accordance with Generally Accepted Accounting
9 Principles, to receive a loan.

10 **"Holder in Due Course":** Holder in Due Course of the instrument(s), pursuant to Cal.
11 Com. Code 3301 et. seq. In this pleading, the Holder in Due Course may refer
12 to the holder of either the Promissory Note, the Deed of Trust, and/or both.

13 **"Lender":** HILLSBOROUGH CORPORATION, A NEVADA CORPORATION,
14 8950 SOUTH 52ND STREET, SUITE 115, TEMPE, AZ 85284. By use of
15 the term "Lender," Plaintiff does not agree or imply that "Lender" is a bank
16 which debited their assets, in accordance with Generally Accepted Accounting
17 Principles, to give a loan.

18 **"Note Holder":** Holder in Due Course of the Promissory Note, pursuant to Cal. Com.
19 Code 3301 et. seq.

20 **"Trust":** The trust which is defined within Deed of Trust defined herein, which
21 contains the irrevocably conveyed Property.

22 **XIV. CONCLUSION AND SUMMARY**

23 Plaintiff alleges as follows:

24 354. that the Defendants did NOT debit their assets as contractual consideration for
25 the Promissory Note, in balance with a credit to the Borrower, following Generally Accepted
26 Accounting Principles, to give the alleged Loan by the accounting of Account No.
27 091510614.

28 355. that photocopies of the original Promissory Note show that the Note is payable
to HILLSBOROUGH CORPORATION, and that it is not indorsed or assigned to any person.

356. that no party excepting HILLSBOROUGH CORPORATION has standing to
receive payments under the Promissory Note and to sell the real property as the security,
reserving the fact that HILLSBOROUGH CORPORATION does not exist.

1 357. that none of the Defendants are the Note Holder of the Promissory Note; and,
2 they are NOT interested parties. None of the Defendants have standing to demand payment
3 under the Promissory Note or to foreclose.

4 358. that none of the Defendants are injured under the Promissory Note or the Deed
5 of Trust.

6 359. that the Defendants, including BAC HOME LOAN SERVICING, LP and
7 BANK OF AMERICA CORPORATION, have NOT disclosed the identity of the Note
8 Holder who is the Lender-assignee and Creditor, and have NOT presented reasonable proof of
9 authority to represent the Note Holder.

10 360. that Plaintiff was NOT notified that Loan Servicing under the Promissory Note
11 is transferrable, and that Plaintiff made payments to BAC HOME LOAN SERVICING, LP
12 fka COUNTRYWIDE HOME LOAN SERVICING, LP, under the mistaken belief that they
13 were the Note Holder and Holder in Due Course, secured by the Deed of Trust.

14 361. that BAC HOME LOAN SERVICING, LP failed to validate the alleged loan
15 while it demanded payment under NOTICE OF INTENT TO ACCELERATE, and in
16 telephone solicitations to determine Plaintiff's alleged inability to cure the fault.

17 362. that BAC HOME LOAN SERVICING, LP incorrectly assessed the residential
18 status of DANIEL HUTCHINS and his wife Stacy, at the time that the alleged loan became
19 delinquent; thereby causing incorrect assessment of eligibility for loan modification, in
20 violation of Cal. Civ. Code §2923.6. DANIEL HUTCHINS resided at the security-collateral
21 address 3021 Nicoletta Lane, Stockton, CA 95212, as his principal residence, and provided
22 the Property as residence for his wife STACY HUTCHINS, at the time the alleged loan
23 Account No. 091510614, allegedly became delinquent. BAC HOME LOAN SERVICING,
24 LP telephone representatives cited residence status as an excuse not to offer a loan
25 modification.

26 363. that the allegations delineated in the affidavit of ROBERT SIEGEL, Mortgage
27 Loan Servicing Specialist of BAC HOME LOAN SERVICING, LP, that BANK OF
28 AMERICA CORPORATION contacted Plaintiff "to assess the borrower's financial situation

1 and explore options for the borrower to avoid foreclosure,” are false, in violation of Cal. Civ.
2 Code §2923.5 (a)(2). Specifically,

3 363.a. that BAC HOME LOAN SERVICING, LP did not validate the
4 alleged debt when it contacted the Plaintiff and his authorized
5 representative Stacy Hutchins; and, Plaintiff was unable to
6 negotiate with the parties without proof of a valid loan.

7 363.b. that BAC HOME LOAN SERVICING, LP hung up the telephone
8 on or near the last day before default, as defined under the
9 NOTICE OF INTENT TO ACCELERATE, as witnessed by the
10 Plaintiff when the telephone call was on speaker phone, as detailed
11 in the affidavit of Plaintiff.

12 363.c. that BAC HOME LOAN SERVICING, LP “stepped on,” in other
13 words, spoke over Stacy’s words while she was speaking, at high
14 rate of speaking that was incomprehensible and could have
15 included any words for which ROBERT SIEGEL could certify
16 under penalty of perjury but did not satisfy the necessary elements
17 of contract negotiation, including offer and acceptance, and honor
18 to the opposing party’s questions and objections which pertained
19 to validation of the debt.

20 364. that Plaintiff hereby denies the allegations stated in the affidavit of ROBERT
21 SIEGEL, Mortgage Loan Servicing Specialist of BAC HOME LOAN SERVICING, LP, who
22 stated, that BANK OF AMERICA CORPORATION contacted Plaintiff “to assess the
23 borrower’s financial situation and explore options for the borrower to avoid foreclosure.”
24 Contrary statements are given by Plaintiff and his wife in the attached exhibit affidavits.
25 Violation of Cal. Civ. Code §2923.5.

26 365. that on September 21, 2010, BAC HOME LOAN SERVICING, LP was in
27 default to Plaintiff under QWR pursuant to RESPA at 12 U.S.C. §2605(e), and BAC HOME
28 LOAN SERVICING, LP refused to identify the Note Holder or to validate its authority as

1 Loan Servicer for the Note Holder, as defined under 12 U.S.C. §2605(i).

2 366. that on September 21, 2010, RECONTRUST COMPANY, N.A. had not sent
3 “Debt Validation Notice” in the mail to Plaintiff. Postmark date is September 27, 2010.

4 367. that on September 21, 2010, employee BETTY JO LIVINGSTON for
5 RECONTRUST COMPANY, N.A. signed NOTICE OF DEFAULT AND ELECTION TO
6 SELL UNDER DEED OF TRUST (“NOD”), as agent for the [alleged] beneficiary, but failed
7 to unambiguously identify the beneficiary, a violation or dishonor in commerce at U.C.C. §3-
8 402 (b)(1), which requires BETTY JO LIVINGSTON to identify the liable party which she
9 claims to represent. Plaintiff alleges that BETTY JO LIVINGSTON made a defective
10 declaration of default upon the alleged foundation and hearsay allegations related to MERS;
11 thereby, the NOD is defective upon numerous counts, as follows:

12 367.a. that on the date of signature of BETTY JO LIVINGSTON,
13 RECONTRUST COMPANY, N.A. did not send to Plaintiff, “debt
14 validation notice.”

15 367.b. that MERS is defined “solely as a nominee” and the term “solely”
16 is limiting, and “nominee” is not defined.

17 367.c. that if MERS is nominee, a signature of MERS is required to state
18 that it is acting in the capacity as nominee for the Lender, and it
19 must identify that party who is Lender or its assignee, pursuant to
20 U.C.C. §3-402 (b)(1), for which MERS claims to be acting as
21 “nominee”; and, Lender must be liable for MERS signature given
22 in the capacity as its nominee.

23 367.d. that MERS was served the second QWR, and MERS was silent to
24 the demand to identify the Note Holder, and the Holder of the
25 Deed of Trust, yet BETTY JO LIVINGSTON claimed on the
26 NOD that MERS passed these documents to RECONTRUST
27 COMPANY, N.A..

28 367.e. that Plaintiff is not aware of a relationship between MERS and

1 BANK OF AMERICA CORPORATION, BAC HOME LOAN
2 SERVICING, LP who is the only party known by Plaintiff to have
3 demanded payments under the alleged loan. However, Plaintiff is
4 not aware that BAC HOME LOAN SERVICING, LP is entitled to
5 receive payments that are secured by the Property, pursuant to Cal.
6 Civ. Code §2932.5, which requires recordation of interest, and as
7 proven by its failure to exhibit the Promissory Note as demanded
8 under the QWR.

9 367.f. that MERS possesses no standing whatsoever under the Deed of
10 Trust as an injured party, because the Deed of Trust is a security
11 instrument only, which does not entitle its Holder to receive
12 payments. Thereby it is impossible for a party under the Deed of
13 Trust to sustain injury to have standing to declare default.

14 367.g. that by a Horse pushing the cart argument, RECONTRUST
15 COMPANY, N.A. is not empowered under the Deed of Trust until
16 one week later, when MERS caused recordation of a Substitution
17 of Trustee.

18 367.h. that the recordation of Substitution of Trustee, in the future, which
19 empowered RECONTRUST COMPANY, N.A., was executed by
20 GULSHAN OOMERJEE, who had two employers which are not
21 at arm's length; thereby, GULSHAN OOMERJEE substituted his
22 second employer for which he is ASSISTANT VICE
23 PRESIDENT, namely RECONTRUST COMPANY, N.A., as the
24 Trustee, while (s)he acted as ASSISTANT SECRETARY for
25 MERS, to execute the assignment.

26 367.i. that the Plaintiff is unable to cure the fault without validation of
27 the identity of the Creditor to whom the debt is owed.

28 367.j. that whereas on the NOD, RECONTRUST COMPANY, N.A.

1 identifies BAC HOME LOAN SERVICING, LP as the Creditor to
2 whom the debt is owed, RECONTRUST COMPANY, N.A.
3 subsequently failed to certify that BAC HOME LOAN
4 SERVICING, LP is that party; instead, RECONTRUST
5 COMPANY, N.A. identified HILLSBOROUGH CORPORATION
6 as the original creditor, for which Plaintiff's mail is returned, at the
7 address given by RECONTRUST COMPANY, N.A..

8 368. that on September 23, 2010, alleged Defendant MERS allegedly executed
9 SUBSTITUTION OF TRUSTEE AND ASSIGNMENT OF DEED OF TRUST. Signature is
10 executed by GULSHAN OOMERJEE as alleged ASSISTANT SECRETARY for MERS, but
11 which Plaintiff alleges is also ASSISTANT VICE PRESIDENT for RECONTRUST
12 COMPANY, N.A., which is not at arm's length.

13 369. that GULSHAN OOMERJEE's execution of SUBSTITUTION OF TRUSTEE
14 AND ASSIGNMENT OF DEED OF TRUST, as ASSISTANT SECRETARY for MERS, is
15 defective upon numerous counts, as follows:

16 369.a. that MERS does not have standing as an interested party under the
17 Deed of Trust, for the same reasons given under the rebuttals for
18 the NOD.

19 369.b. that the SUBSTITUTION OF TRUSTEE is defective because the
20 Deed of Trust empowers only the Lender, not the nominee for the
21 Lender, and the definition for MERS as nominee is defined with
22 the limiting term "solely."

23 369.c. that the ASSIGNMENT OF DEED OF TRUST is defective
24 because MERS does not possess interest in the Deed of Trust
25 beyond its definition as "nominee," whereas ASSIGNMENT OF
26 DEED OF TRUST implies that MERS assigns full authority as
27 Trustee, which MERS does not possess under the Deed of Trust.

28 369.d. also that if the assignee BAC HOME LOAN SERVICING, LP

1 were to “stand in the shoes” of MERS, as MERS, BAC HOME
2 LOAN SERVICING, LP could only be the nominee, and its status
3 as nominee would be limited “solely” as the nominee.

4 369.e. that Plaintiff is not aware of any proof that MERS has an interest
5 in the Promissory Note that is secured by the Deed of Trust.

6 369.f. that when MERS assigned interest in the Deed of Trust, it is not
7 established that MERS is in possession of the Deed of Trust. If
8 MERS were in possession of this security Instrument, it would be
9 separated from the Promissory Note that it secures, which is
10 defined as a nullity under the historic ruling of *Carpenter v.*
11 *Longan* ⁷¹ .

12 369.g. that MERS cannot transfer that which it does not possess.

13 370. that on postmark date September 27, 2010, RECONTRUST COMPANY, N.A.
14 sent “Debt Validation Notice” in the mail to Plaintiff.

15 371. that Plaintiff disputed validity of debt in DEBT DISPUTE, which is timely
16 sent to RECONTRUST COMPANY, N.A. on October 18, 2010, within thirty (30) days.

17 372. that WENDY MCKNIGHT, VICE PRESIDENT, LEGAL SUPPORT for
18 RECONTRUST COMPANY, N.A., failed to respond with the identity of the Creditor to
19 whom the debt was owed; instead, WENDY MCKNIGHT disclosed the identity of the
20 original creditor, as HILLSBOROUGH CORPORATION, and gave their former address, for
21 which Plaintiff was already aware, and for which Plaintiff’s mail to HILLSBOROUGH
22 CORPORATION at the given address was already returned.

23 373. that WENDY MCKNIGHT stated that BAC HOME LOAN SERVICING, LP
24 would respond to the remaining issues that were given within DEBT DISPUTE.

25 374. that in letter dated November 12, 2010, SUSIE SORIA, Litigation Specialist,
26 BAC HOME LOAN SERVICING, LP, QWR Group, states that concerns in Plaintiff
27 correspondence “require further detailed analysis.”

28

⁷¹ *Carpenter v. Longan*, op. cit. Note 23.

1 375. that Plaintiff is in receipt of NOTICE OF TRUSTEE'S SALE whereby
2 Defendant RECONTRUST states that it may sell Property on January 24, 2011.

3 376. that Plaintiff is not aware of any proof that NOTICE OF TRUSTEE'S SALE,
4 and NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST, are
5 not rescinded, notwithstanding SUSIE SORIA's written statement that the Plaintiff's
6 correspondence "require[s] further detailed analysis."

7
8 **XV. PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff respectfully moves this Honorable Court that should the
10 Defendants fail to rebut the Causes of Action, point for point, or should this Honorable Court
11 give judicial notice of the Plaintiff's QWR, that this Honorable Court enters a judgment
12 ordering the following remedies:

13 377. Release all claims against Plaintiff in relations to this case due to lack of proof
14 of claim and standing.

15 378. No further action can be taken against Plaintiff, including but not limited to
16 foreclosure sale, Trustee sale, Quiet Title Action or collections.

17 379. Remove all derogatory reporting with the credit bureaus in relation to this case
18 and report this account as "Settled in Full".

19 380. Mark the Loan as "Settled in Full" for the Defendant's own record as well as
20 all public records including but not limited to; all credit bureaus and county records.

21 381. Return all monies collected on this transaction to date with the same interest as
22 the original Promissory Note, calculated from the date of the loan, paid in one lump sum.


23 382. Issue a full reconveyance on the Deed of Trust, in favor of the Plaintiff and
24 Plaintiff's successors and assigns.

25 383. Any and all other remedies appropriate and necessary deemed by this
26 Honorable Court.

27 384. Preliminary injunction against Trustee's Sale.
28

1 **XVI. DEMAND FOR JURY TRIAL**

2 385. Plaintiff hereby requests a jury trial on all issues raised in this complaint.

3
4
5 

6 Daniel Lynn Hutchins

7 In care of

8 17868 US Highway 18, Ste 133

9 Apple Valley, California [92307]

10 (760) 490-3750

11 danielh@hush.com

SCHEDULE A. TABLE OF AUTHORITIES

384. COURT RULINGS

Adler v. Sargent, 109 Cal. 42, 49-50 (1895).....	42
<i>Anheuser-Busch Brewing Company v. Emma Mason</i> , 44 Minn. 318, 46 N.W. 558 (1890)	60
Carpenter v. Longan, 83 U. S. 271 (1872), 21 L.Ed. 313, 16 Wall. 271.....	19, 27, 34, 41, 42, 43, 62, 72, 75, 76, 86, 102, 109, 111, 119
Haines v Kerner, 404 U.S. 519 (1972).....	104
In re BARRY WEISBAND, Case No. Case No. 4:09-bk-05175- EWH, U.S. BANKRUPTCY COURT, FOR THE DISTRICT OF ARIZONA.....	18, 19, 30, 31, 40
In re Rickie Walker, Case No. 10-21656-E-11, U.S. BANKRUPTCY COURT, EASTERN DISTRICT OF CALIFORNIA	18, 19, 26, 29, 31, 41
Omychund v Barker (1745) 1 Atk, 21, 49; 26 ER 15, 33	103
<i>Platsky v CIA</i> , 953 F.2d 26 (2nd Cir. 1991).....	104

385. UNITED STATES CODE

385.a. Title 12	
12 U.S.C. §2602	3, 6
12 U.S.C. §2605	3, 4, 6, 11, 45, 47, 48, 91, 92, 94, 107, 115, 116
12 U.S.C. §2614	5, 6
385.b. Title 15	
15 U.C.C. §1692e.....	4
15 U.S.C. § 78ff	105
15 U.S.C. §1641	4, 6, 45, 48, 53, 92, 94, 95, 127
15 U.S.C. §1692g.....	45, 48, 56, 95
15 U.S.C. §45	4, 48, 60
385.c. Title 18	
18 U.S.C. §§1341 <i>et. seq.</i>	4, 6, 89

1	385.d. Title 28	
2	28 U.S.C. §1331	6
3	386. UNIFORM COMMERCIAL CODE	
4	U.C.C. §2-204	60
5	U.C.C. §3-201	4, 26, 29, 30, 103
6	U.C.C. §3-203	4, 25, 26, 30, 103
7	U.C.C. §3-204	4, 25, 26, 30, 103
8	U.C.C. §3-301	18, 25, 26, 103
9	U.C.C. §3-302	25, 26, 103
10	U.C.C. §3-402	18, 33, 64, 78, 85
11	U.C.C. §3-501	11, 27, 28, 29, 61, 92, 94, 95, 107
12	U.C.C. §3-604	103
13	387. FEDERAL RULES	
14	Fed. R. Civ. P. 17(a).....	60, 70
15	Fed. R. Evid. 1002	26, 28, 61, 103
16	Fed. R. Evid. 201 (d).....	102
17	388. CALIFORNIA CIVIL CODE	
18	Cal. Civ. Code §2924	4, 62, 65, 66
19	Cal. Civ. Code §2924c	5, 63, 73, 74
20	Cal. Civ. Code §2932.5	passim
21	Cal. Civ. Code §2934a	passim
22	Cal. Civ. Code §2937	passim
23	Cal. Civ. Code §3440	19, 26, 41
24	389. CALIFORNIA COMMERCIAL CODE	
25	Cal. Com. Code §3109	29
26	Cal. Com. Code §3201	30
27	Cal. Com. Code §3203	30
28	Cal. Com. Code §3204	30

1	Cal. Com. Code §§9313-9314.....	26
2	Cal. Com. Code §3109.....	31
3	Cal. Com. Code §3201.....	31
4	Cal. Com. Code §3203.....	31
5	Cal. Com. Code §3204.....	31
6	Cal. Com. Code §3301.....	25
7	Cal. Com. Code §3302.....	25, 26
8	Cal. Com. Code §3501.....	27, 29, 94, 95
9		
10		
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SCHEDULE B.

REAL ESTATE SETTLEMENT PROCEDURES.

Title 12 U.S.C., §2601 et. seq.

CHAPTER 27—REAL ESTATE SETTLEMENT PROCEDURES

§2605 *Servicing of mortgage loans and administration of escrow accounts*

servicing.

(a) Disclosure to applicant relating to assignment, sale, or transfer of loan servicing.

Each person who makes a federally related mortgage loan shall disclose to each person who applies for the loan, at the time of application for the loan, whether the servicing of the loan may be assigned, sold, or transferred to any other person at any time while the loan is outstanding.

(e) Duty of loan servicer to respond to borrower inquiries.

(1) Notice of receipt of inquiry.

(A) In general

If any servicer of a federally related mortgage loan receives a qualified written request from the borrower (or an agent of the borrower) for information relating to the servicing of such loan, the servicer shall provide a written response acknowledging receipt of the correspondence within 20 days (excluding legal public holidays, Saturdays, and Sundays) unless the action requested is taken within such period.

(B) Qualified written request

(ii) includes a statement of the reasons for the belief of the borrower, to the extent applicable, that the account is in error or provides sufficient detail to the servicer regarding other information sought by the borrower.

(2) Action with respect to inquiry

Not later than 60 days (excluding legal public holidays, Saturdays, and Sundays) after the receipt from any borrower of any qualified written request under paragraph (1) and, if applicable, before taking any action with respect to the inquiry of the borrower, the servicer shall—

(A) make appropriate corrections in the account of the borrower, including the crediting of any late charges or penalties, and transmit to the borrower a written notification of such correction (which shall include the

1 name and telephone number of a representative of the
2 servicer who can provide assistance to the borrower);
3 (B) after conducting an investigation, provide the borrower with
4 a written explanation or clarification that includes—
5 (i) to the extent applicable, a statement of the reasons for
6 which the servicer believes the account of the borrower
7 is correct as determined by the servicer; and
8 (ii) the name and telephone number of an individual
9 employed by, or the office or department of, the servicer
10 who can provide assistance to the borrower; or
11 (C) after conducting an investigation, provide the borrower
12 with a written explanation or clarification that
13 includes—
14 (i) information requested by the borrower or an
15 explanation of why the information requested is
16 unavailable or cannot be obtained by the servicer; and
17 (ii) the name and telephone number of an individual
18 employed by, or the office or department of, the servicer
19 who can provide assistance to the borrower.

20 (3) Protection of credit rating

21 During the 60-day period beginning on the date of the servicer's
22 receipt from any borrower of a qualified written request relating
23 to a dispute regarding the borrower's payments, a servicer may
24 not provide information regarding any overdue payment, owed
25 by such borrower and relating to such period or qualified
26 written request, to any consumer reporting agency (as such term
27 is defined under section 1681a of title 15).

28 (i) Definitions

For purposes of this section:

(2) Servicer

The term "servicer" means the person responsible for servicing
of a loan (including the person who makes or holds a loan if
such person also services the loan).

(3) Servicing

The term "servicing" means receiving any scheduled periodic
payments from a borrower pursuant to the terms of any loan,
including amounts for escrow accounts described in section
2609 of this title, and making the payments of principal and
interest and such other payments with respect to the amounts
received from the borrower as may be required pursuant to the
terms of the loan.

1 **SCHEDULE C.**

CONSUMER CREDIT PROTECTION ACT

2 **Title 15 U.S.C. §1641. Liability of assignees**

3 (f) Treatment of servicer

4 (2) Servicer not treated as owner on basis of assignment for administrative
5 convenience

6 Upon written request by the obligor, the servicer shall provide the obligor, to
7 the best knowledge of the servicer, with the name, address, and telephone
8 number of the owner of the obligation or the master servicer of the obligation.

9 (g) Notice of new creditor

10 (1) In general. In addition to other disclosures required by this subchapter, not
11 later than 30 days after the date on which a mortgage loan is sold or otherwise
12 transferred or assigned to a third party, the creditor that is the new owner or
13 assignee of the debt shall notify the borrower in writing of such transfer,
14 including—

15 (A) the identity, address, telephone number of the new creditor;

16 (B) the date of transfer;

17 (C) how to reach an agent or party having authority to act on behalf of
18 the new creditor;

19 (D) the location of the place where transfer of ownership of the debt is
20 recorded; and

21 (E) any other relevant information regarding the new creditor.

22 (2) Definition. As used in this subsection, the term “mortgage loan” means
23 any consumer credit transaction that is secured by the principal dwelling of a
24 consumer.

SCHEDULE D.

FAIR DEBT COLLECTIONS PRACTICES ACT

Title 15 U.S.C. §1692e. False or misleading representations

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(2) The false representation of—

(A) the character, amount, or legal status of any debt; or

(5) The threat to take any action that cannot legally be taken or that is not intended to be taken.

(8) Communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed.

(10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

(11) The failure to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector, except that this paragraph shall not apply to a formal pleading made in connection with a legal action.