Maria Fresvinda Mejorada

2351 West La Habra Blvd.

La Habra, CA 90631

Pro se

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

NORTH JUSTICE CENTER

MARIA FRESVINDA MEJORADA, :

Plaintiff(s), : CIVIL CASE NO.

:

: RELATED CASE NO. 30-2012-00544553

Vs. : : COMPLAINT FOR DAMAGES,

BANK OF AMERICA, N.A., : DECLARATORY AND INJUNCTIVE

: RELIEF; (VERIFIED)

RECONTRUST COMPANY, N.A., : (1) UNFAIR BUSINESS PRACTICES;

MORTGAGE ELECTRONIC : (2) FRAUD;

REGISTRATION SYSTEM, : (3) RESCISSION;

TINA SEVILLANO, : (4) QUIET TITLE

and DOES I through X, inclusive, :

Defendants. : Unlimited Jurisdiction

Comes now, Maria Fresvinda Mejorada, , Plaintiff [hereinafter Plaintiff] in the aforesaid captioned case respectfully filing Complaint for Unfair Business Practices, Fraud, Rescission and to Quiet Title and sets forth the following in support thereof:

JURISDICTION AND VENUE

This Court has jurisdiction over this matter pursuant to the California Constitution, Article XI, section 10 and California Code of Civil Procedure (“CCCP”) section 410.10 because Defendants transacted business and committed the acts complained of herein in California, specifically in the County of Orange. The violations of law alleged herein were committed in Orange County and elsewhere within the State of California.

Venue is proper in Orange County, California, pursuant to CCCP section 395 and

because many of the acts complained about occurred in Orange County.

Jurisdiction of this Honorable Court over subject matter to quiet title is conferred by California Code of Civil Procedure, 760.040(b):

The Court has complete jurisdiction over the parties to the action and the property described in the complaint and is deemed tot have possession and control over the property for the purpose of the action with complete jurisdiction to render the judgment provided for in this chapter.

PARTIES

1. Plaintiff: Maria Fresvinda Mejorada, is currently U.S. citizen and is the legal registered owner of 2351 West La Habra Blvd., La Habra, California 90631.

2. Defendant, BANK OF AMERICA, N.A., is a financial services corporation, it is the second largest bank holding company in the United States by assets, and the fourth largest bank in the U.S. by market capitalization. The bank currently is headquartered at 100 North Tryon Street, Charlotte, North Carolina.

3. Defendant: RECONTRUST COMPANY, N.A[[1]](#footnote-1)., is a wholly owned subsidiary of Bank of America, N.A. that handles foreclosures throughout the United States. Current address is 1800 Tapo Canyon Road, CA6-914-01-94, Simi Valley, CA 93063.

4. Defendant, MORTGAGE ELECTRONIC REGISTRATION SYSTEM, INC, [MERS] is a corporation set up to track mortgages as they're traded by investors in mortgage-backed securities. It's a system set up to let banks avoid the process of paying recurring filing fees at county courthouses each time a mortgage was bought or sold. MERS is a Delaware Corporation with Corporate office at 1818 Library Street, Suite 300, Reston, VA 20190

5. Defendant, TINA SEVILLANO, is an employee of RECONTRUST COMPANY, N.A., whose last known address is 950 Catalono Court, Fillmore, CA 93015.

STATEMENT OF FACTS

6. Plaintiff was[[2]](#footnote-2), at all times stated herein, a Mexican National legally residing herein the United States of America. Plaintiff’s primary language is Spanish and she is incapable of reading, writing or speaking English.

7. Plaintiff’s daughter, Jessica Guerrero, and husband, Leonardo Mejorada, originally purchased the residence in question; 2351 West La Habra Boulevard, La Habra, California. Legal description as follows:

LOT 158 IN THE TRACT 1943, IN THE CITY OF LA HABRA, COUNTY OF ORANGE, STATE OF CLAIFORNIA, AS SHOWN ON MAP RECORDED IN BOOK 71, PAGES 34 TO 37 INCLUSIVE OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

8. Do to economics beyond their control they became late with mortgage payments. On or about mid December, 2008, Plaintiffs, Jessica Guerrero and her father decided to refinance the mortgage on their titled residence in an attempt to reduce the monthly $2178.15 payments and ameliorate the stress.

9. A private Hispanic Broker advised said Plaintiffs that he could procure a refinance loan with Countrywide Bank, FSB, that would reduce their monthly payment.

10. Said Broker informed said family it would be advantageous for the Plaintiff to apply for the new loan inasmuch as she had no late payments filed on her credit report.

11. Said Broker was informed that Plaintiff was a part-time housekeeper which earned very little. Broker responding by assuring Plaintiff’s family there would be no problem and proceeded to process the application with Plaintiff.

12. The Uniform Residential Loan Application [URLA] was in English, albeit all communication for the entire transaction was conducted in Spanish.

13. Said Broker presented Plaintiff with copies of all documentation of the transaction in English to be signed. Plaintiff complained the payments were higher than they were originally paying and the Broker stated, “it’s too late now”.

14. The Loan Application and Note were signed by Plaintiff only.

15. Said Broker demanded the signatures of Plaintiff’s daughter and Husband on the Deed of Trust, along with Plaintiff’s signature, without any explanation.

16. As was reasonably foreseeable Plaintiff defaulted on her loan.

17. Plaintiff tendered an offer to refinance and was making payments while the offer was considered. However, the tender was refused and Plaintiff was told of impending foreclosure.

OFFICIAL RECORD

18. On January 11, 2008, a Deed of trust was recorded in the Official Record of Orange County wherein Plaintiff is “Borrower”, Countrywide Bank is “Lender”, ReconTrust Company, N.A., is “Trustee”, and Mortgage Electronic Registration System [MERS] is “Nominee for Lender and Lender’s successors and assigns.”

19. On August 09, 2010, NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED TO TRUST was recorded “by Priscilla Torres“, ReconTrust Company as agent for the beneficiary, BAC Home Loans Servings, LP FKA Countrywide Home Loans Servicing Lp.

20. On August 17, 2010, Corporation Assignment of Deed of Trust was recorded wherein MERS, alleged assistant secretary, T. Sevillano, assigned and transferred “all beneficial interest in that certain Deed of Trust” to BAC HOME LOANS SERVICING, LP FKA COUNTYWIDE HOME LOANS SERVICING LP.

21. On November 16, 2010, Notice of Trustee’s Sale was recorded by Recontrust Company and signed “by: Rosselin Rincon, team member.”

22. Subsequent to the sale RECONTRUST COMPANY N.A. recorded a Trustee’s Deed Upon Sale granting the property in question to BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING, LP, SIGNED BY Christina Balandran, Assistant Vice President.

ALLEGATIONS

I. Uniform Residential Loan Application [URLA]:

23. Reviewing the Uniform Residential Loan Application [URLA] it is glaringly obvious the fraud was intentionally committed. First and foremost, said Application documents Maria as a “housekeeper” for Motel 6, making $6500.00 per month. In reality Maria worked part-time and made $6.75 per hour. Maria did not have a 401(k) worth $46,000.00 nor did she have $45,000.00 in Other Assets as recorded on page 2 of URLA. The URLA on page 3, under X. Information for Government Monitoring Purposes, states the Application was taken by “Telephone” by Maria Cervantes as “Interviewer” on behalf of her employer Countrywide Bank, FSB. There is nothing in the record of the independent Broker.

24. The Plaintiffs entire purpose for refinancing her home mortgage was thwarted by the greed of an independent broker that left no foot print. The named Defendants knew, or it should have been reasonably foreseeable, that Plaintiffs would default on their mortgage with monthly installments $300.00 higher than original payments.

II. Assignment of Deed of Trust to a Servicer:

25. As set forth, infra, Defendant MERS in concert with ReconTrust Company did falsely create a document to assign beneficiary interest in Plaintiff’s home to BAC Home Loans Servicing, LP, a servicing agency and not a true beneficiary. An employee of ReconTrust Company, Tina Sevillano, signed as an “assistant secretary” for MERS to fraudulently record the aforesaid Corporation Assignment of Deed of Trust.

26. The named Defendants have a pattern of activity that intentionally violates clearly established Business and Profession codes, Civil codes, and criminal codes.

UNFAIR BUSINESS PRACTICES

27. Plaintiffs incorporate herein by reference the allegations made in paragraphs 1 through 26, inclusive, as though fully set forth herein.

28. The unlawful acts and practices of Defendants alleged above constitute unlawful

business acts and/or practices within the meaning of California Business and Professions Code section 17200. Defendants’ unlawful business acts and/or practices as alleged herein have violated numerous state, statutory and/or common laws - and said predicate acts are therefore per se violations of section 17200. These predicate unlawful business acts and/or practices include, but are not limited to, the following: California Civil Code section 1572 (Actual Fraud), California Civil Code section 1573 (Constructive Fraud by Omission), California Civil Code section 1710 (Deceit), California Civil Code section 1770 (the Consumers Legal Remedies Act – Deceptive Practices), and other California statutory and common law.

Cancellation of a Voidable Contract

29. Plaintiff incorporates herein by reference the allegations made in paragraphs 1 through 28, inclusive, as though fully set forth herein.

30. MERS operates as a record-keeping database company in which MERS contracts with lenders to track security instruments in return for an annual fee.

31. Based upon information and belief, MERS was at all times herein operating in the State of California without registering as a foreign corporation to avoid paying taxes to the state.

32. As a result of MERS’s failure to comply with the California franchise tax laws, the Deed of Trust alleged herein is voidable by Plaintiff pursuant to Rev & Tax Code §§ 23304.1, 23304.1(b), and 23305a.

33. Moreover, MERS is not in the business of creating evidences, and it is not a foreign lending institution. It does not originate loans, never was a real party in interest in the subject loan or Deed of Trust, and thereby does not meet any legal exceptions to the registration requirement for foreign corporations.

34. MERS conducted business in California when it was not registered with the Secretary of State. Allegedly, MERS prepared and/or executed a Corporation Assignment of Deed of Trust recorded in the Official Records of Orange County on August 17, 2010.

35. At all relevant times herein, MERS was not registered in California and could not prepare or execute the Assignment of Deed of Trust. MERS had no legal authority to take such action. Deeds of Trust are contractual in nature. A contract made by a corporation doing business in California while that corporation has failed to perform its franchise tax obligations is voidable at the option of any party to the contract. Thus, MERS did not have the legal capacity to enter into a contract with Plaintiff or anyone else, and Plaintiff has the option of voiding the contract. Therefore, any action that MERS took with regard to assigning the within deed of trust would be ultra vires and void.

36. Plaintiff hereby expressly requests an adjudication to the effect that the Corporation Assignment of the Deed of Trust by MERS is void.

FRAUD

37. Plaintiff incorporates herein by reference the allegations made in paragraphs 1 through 36, inclusive, as though fully set forth herein.

38. The Deed of Trust recorded on January 11, 2008, in the Official Records of Orange County has your Plaintiff as “Borrower”, Countrywide Bank, FSB[[3]](#footnote-3) as “Lender”, ReconTrust Company, N.A. as “Trustee” and MERS as “Nominee.“

39. A Corporation Assignment of Deed of Trust was recorded on August 17, 2010, assigning the property in question to “BAC Home Loans Servicing, LP[[4]](#footnote-4).” [See exhibit 1.]

40. The aforesaid Assignment was allegedly authorized by MERS assistant secretary, T. Sevillano[[5]](#footnote-5). A cursory inspection of the document reveals rubber stamped names of the signer and the Notary. Closer inspection reveals the document was dated August 05, 2010, albeit Notarized on August 11, 2010.

41. The aforesaid oddities raised suspicion mandating a more thorough investigation which revealed that T. Sevillano signs Corporation assignments for anyone who needs one. See Exhibit 2 [it should be noted that the assigning party in said exhibit, Home123 Corporation, had its license revoked on May 01, 2007, by California Department of Corporations, prior to the issuance of the exhibit].

42. Tina Sevillano, employee for Recontrust Company[[6]](#footnote-6) [trustee in deed of trust] knowingly committed fraud by submitting a fraudulent Document to be recorded in the Official Records of Orange County.

43. As a result of the Defendants’ fraudulent conduct, Plaintiffs have suffered compensatory, general and special damages in an amount to proof.  Additionally, the Defendants acted with malice, fraud and/or oppression and, thus, Plaintiff is entitled to an award of punitive damages.

RESCISSION

44. Plaintiff incorporates herein by reference the allegations made in paragraphs 1 through 43, inclusive, as though fully set forth herein.

45. “A party to a contract may rescind the contract …[i]f the consent of the party rescinding….. was given by mistake, or obtained through duress, menace, fraud, or undue influence, exercised by or with the connivance of the party as to whom he rescinds, or of any other party to the contract jointly interested with such party“. CCCP 1689(b).

46. Should Plaintiff have been provided a copy of the closing documents in Spanish a Notice of the Right to Rescind would have lawfully informed her that it was “not too late” to refuse the loan; and that she had the right to seek a more affordable refinancing. The California Translation Act was legislated to protect consumers that do not speak English. California Civil Code section 1632 mandates the following:

[In pertinent part] (b)“Any person engaged in a trade or business who negotiates primarily in Spanish…. orally or in writing, in the course of entering into any of the following, shall deliver to the other party to the contract or agreement and prior to the execution thereof, a translation of the contract or agreement in the language in which the contract or agreement was negotiated, which includes a translation of every term and condition in that contract or agreement[.]”

Inasmuch as the instant transaction complained of is not specifically listed in sub section (b) we continue to sub section (c) which reads:

(c) Notwithstanding subdivision (b), for a loan subject to this part and to Article 7 (commencing with Section 10240) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code, the delivery of a translation of the statement to the borrower required by Section 10240 of the Business and Professions Code in any of the languages specified in subdivision (b) in which the contract or agreement was negotiated, is in compliance with subdivision (b).

We now turn to the Business and professions code section 10240 which clearly defines what is mandated:

(a) Every real estate broker, upon acting within the meaning of subdivision (d) of Section 10131, who negotiates a loan to be secured directly or collaterally by a lien on real property shall, within three business days after receipt of a completed written loan application or before the borrower becomes obligated on the note, whichever is earlier, cause to be delivered to the borrower a statement in writing, containing all the information required by Section 10241. It shall be personally signed by the borrower and by the real estate broker negotiating the loan or by a real estate licensee acting for the broker in negotiating the loan. When so executed, an exact copy thereof shall be delivered to the borrower at the time of its execution. The real estate broker negotiating the loan shall retain on file for a period of three years a true and correct copy of the statement as signed by the borrower.

When, as we have here, Defendants deliberately violate the aforesaid code and through connivance and manipulates the Borrower into a loan that is unaffordable, and as it would seem leaves no trace in the record of his involvement, it could easily lead one to believe his actions were deliberate. Notwithstanding the aforesaid:

(k) Upon a failure to comply with the provisions of this section, the person aggrieved may rescind the contract or agreement in the manner provided by this chapter. When the contract for a consumer credit sale or consumer lease which has been sold and assigned to a financial institution is rescinded pursuant to this subdivision, the consumer shall make restitution to and have restitution made by the person with whom he or she made the contract, and shall give notice of rescission to the assignee. Notwithstanding that the contract was assigned without recourse, the assignment shall be deemed rescinded and the assignor shall promptly repurchase the contract from the assignee. CCCP section 1632

WHEREFORE, it is respectfully requested that this Honorable Court grant Plaintiff the right to rescind the contract.

UNLAWFUL CONVERSION.

47. Plaintiffs incorporate herein by reference the allegations made in paragraphs 1 through 46, inclusive, as though fully set forth herein.

48. Plaintiff borrowed from Countrywide Bank FSB to refinance her home. Plaintiff never received notice from Countrywide Bank, FSB, of any transfer to another Beneficiary. The Corporation Assignment of Deed of Trust dated August 05, 2011, and notarized on August 11, 2011, is unlawful. MERS, for whom T. Sevillano is supposed to have signed as assistant secretary for, did not have an office in Los Angeles; which could explain the six day delay in notarization. Notwithstanding the blatant fraud in creating the document, the assignee BAC Home Loan Servicing[[7]](#footnote-7) is a mortgage servicing agency and not a true beneficiary. The convenience of manipulating a troubled asset out of Countrywide Bank, FSB, into Bank of America, N.A., utilizing an insulator in the event of litigation is clever; IF, it is lawfully executed. Using unauthorized Robo-signers creates a cloud on title. The manner in which Countrywide Financial Group was acquired by Bank of America verifies that Bank of America is not the legal Beneficiary/Note holder. Bank of America, N.A. created Red Oak Merger Corporation[[8]](#footnote-8) to acquire the assets of Countrywide on July 1, 2008. Countrywide Financial Group was never merged into Bank of America, N.A.. There is no evidence in record that Bank of America is the true Beneficiary and note holder. Without verification of a transfer/sale/assignment to Bank of America, N.A., by the last registered Beneficiary/Note holder, Countrywide Bank, FSB, the Substitution of Trustee, Notice of Trustee’s Sale, and Trustee’s Deed are null and void. The actions of the named Defendants acting in concert is unlawful conversion of Plaintiff‘s property.

49. Not one of the named Defendants have established any evidence that any one of them, collectively or separately, was the true “real party in interest” and thereby had standing to sell Plaintiff’s home.

WHEREFORE, Plaintiffs pray for the following:

1) A Determination and Declaratory judgment that Plaintiff is the rightful holder to the property and that defendants, Bank of America, N. A., ReconTrust Company, their assigns, agents, or representatives have no estate, right, title or interest in 2351 West La Habra Blvd., La Habra, CA 90631.

2) A Judgment forever enjoining said defendants, Bank of America, N. A., ReconTrust Company, their assigns, agents, or representatives from claiming estate, right, title or interest in 2351 West La Habra Blvd., La Habra, California. 90631

3) Void the Corporation Assignment of Deed of Trust, Notice of Trustee’s Sale, and Trustee’s Deed from the Official Court Record.

4) Grant Plaintiff the right to rescind the contract thereby rendering the Deed of Trust null and void.

4) Costs of the instant suit.

5) Any other equitable relief deemed appropriate by this Honorable Court.

6) Punitive damages of $414,000.00 dollars.

DATE: February 29, 2012

Respectfully submitted,

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

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: RELIEF

RECONTRUST COMPANY, N.A., : (1) UNFAIR BUSINESS PRACTICES

MORTGAGE ELECTRONIC : (2) FRAUD

REGISTRATION SYSTEM, : (3) RESCISSION

TINA SEVILLANO, : (4) QUIET TITLE

and DOES I through X, inclusive, :

Defendants. : (VERIFIED)

VERIFICATION

I, Maria Fresvinda Mejorada, do hereby verify under the penalty of perjury that the contents of the heretofore attached Complaint are true and correct to the best of my knowledge, information, and belief.

DATE: February 29, 2012

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Maria Fresvinda Mejorada

1. The Attorney General for the State of Washington sued ReconTrust Company because it “[c]reated or permitted the use of documents that were improperly executed, notarized, or sworn to. Notices and agreements contained conflicting dates and improper notarizations, and ReconTrust employees sometimes signed as officers of other entities”. [↑](#footnote-ref-1)
2. Plaintiff is now U.S. Citizens. [↑](#footnote-ref-2)
3. On July 1, 2008, the transaction was completed with Countrywide Financial Corporation merging into Red Oak Merger Corporation, a wholly owned merger subsidiary of Bank of America Corporation. [↑](#footnote-ref-3)
4. BAC Home Loan Servicing LP is a wholly owned subsidiary of Bank of America, N.A. [↑](#footnote-ref-4)
5. T. Sevillano is listed at Linkin, a profession networking website, as a secretary for Recontrust Company in Los Angeles, California. She is a known Robo signer and has signed documents on behalf of Bank of America, MERS, Home123 Corporation. [↑](#footnote-ref-5)
6. ReconTrust Company, N. A. is a wholly owned subsidiary of Bank of America, N. A. [↑](#footnote-ref-6)
7. Is a wholly owned subsidiary of Bank of America, N.A.. [↑](#footnote-ref-7)
8. The deal was structured to merge Countrywide with the Red Oak Merger Corporation, which Bank of America created as an independent subsidiary. It has been speculated that the deal was structured this way to prevent a potential bankruptcy stemming from large losses in Countrywide to hurt the parent organization by keeping Countrywide bankruptcy remote. [↑](#footnote-ref-8)