

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

TIMOTHY L. MCCANDLESS, ESQ. SBN 147715  
LAW OFFICES OF TIMOTHY L. MCCANDLESS  
13240 Amargosa Road  
Victorville, California 92392  
(760) 951-3663 Telephone  
(909) 382-9956 Facsimile

Attorney for Defendants  
MICHELLE CABESAS; LETICIA EDILLO

ENDORSED FILED  
SOLANO SUPERIOR COURT  
09 AUG 26 PM 12:14  
S. WIDEMANN  
BY \_\_\_\_\_ DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SOLANO  
SOLANO JUSTICE CENTER

FANNIE MAE ALSO KNOWN AS  
FEDERAL NATIONAL MORTGAGE  
ASSOCIATION,

Plaintiff,

vs.

MICHELLE CABESAS; LETICIA  
EDILLO,

Defendants,

and DOES 1 through 50 inclusive,

Defendants.

Case No.: VCM 106610

NOTICE AND DEMURRER TO COMPLAINT,  
MEMORANDUM OF POINTS AND  
AUTHORITIES; [PROPOSED ORDER]

DATE: 9-10-09  
TIME: 1:30 pm  
DEPT: 26

By Fax

✓  
cal

NOTICE IS HEREBY GIVEN that on date and time mentioned above at the Superior Court of California, County of Solano, Defendants MICHELLE CABESAS and LETICIA EDILLO [hereinafter "Defendants"] will demurrer to Plaintiff's Complaint for Unlawful Detainer pursuant to *Code of Civil Procedure* sections 430.10 (b)(e) and (f) on the following grounds: The first cause of action for Unlawful Detainer fails under the following sections: (b) The person who filed the pleading does not have the legal capacity to sue. (e) The pleading does

ORIGINAL

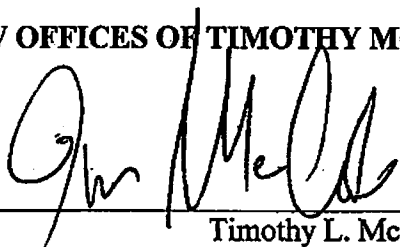
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

not state facts sufficient to constitute a cause of action. (f) The pleading is uncertain. As used in this subdivision, "uncertain" includes ambiguous and unintelligible.

This Demurrer is based upon this Notice, the attached Memorandum of Points and Authorities, all other pleadings, papers, and records on file herein, and upon such further oral and documentary evidence as may be presented at the time of the hearing of the demurrer.

Dated: August 11, 2009

LAW OFFICES OF TIMOTHY MCCANDLESS ESQ.



---

Timothy L. McCandless, Esq.,  
Attorney for Defendants  
MICHELLE CABESAS; LETICIA  
EDILLO

1  
2  
3  
4  
5  
6  
7  
8  
9  
10

The first part of the report deals with the general situation of the country and the progress of the war. It is followed by a detailed account of the operations of the various departments and agencies of the Government. The report concludes with a summary of the work done during the year and a statement of the resources available for the coming year.

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97  
98  
99  
100

The second part of the report deals with the operations of the various departments and agencies of the Government. It is followed by a detailed account of the work done during the year and a statement of the resources available for the coming year.

101  
102  
103  
104  
105  
106  
107  
108  
109  
110  
111  
112  
113  
114  
115  
116  
117  
118  
119  
120  
121  
122  
123  
124  
125  
126  
127  
128  
129  
130  
131  
132  
133  
134  
135  
136  
137  
138  
139  
140  
141  
142  
143  
144  
145  
146  
147  
148  
149  
150  
151  
152  
153  
154  
155  
156  
157  
158  
159  
160  
161  
162  
163  
164  
165  
166  
167  
168  
169  
170  
171  
172  
173  
174  
175  
176  
177  
178  
179  
180  
181  
182  
183  
184  
185  
186  
187  
188  
189  
190  
191  
192  
193  
194  
195  
196  
197  
198  
199  
200

The third part of the report deals with the operations of the various departments and agencies of the Government. It is followed by a detailed account of the work done during the year and a statement of the resources available for the coming year.

**Plaintiff's Claim for Relief "UNLAWFUL DETAINER"**

The Claim for Relief for Unlawful Detainer, fails to state facts sufficient to constitute a cause of action, in addition the pleading is, "uncertain" "ambiguous" and "unintelligible". C.C.P. § 430.10 (b) (e) and (f):

1. The requisite documents in order to establish a foundation for the ownership of the subject property was not attached by plaintiff; and Defendant cannot determine whether is a proper party;
2. Defendant cannot determine whether the action is being prosecuted for the benefit of FANNIE MAE ALSO KNOWN AS FEDERAL NATIONAL MORTGAGE ASSOCIATION [hereinafter """] or for the unknown assignees.
3. There will be another another action currently between the same parties based on the same claim but including Lender Fraud. This matter will be filed in Solano Superior Court. The unlimited court must consolidate for trial the two cases and a motion to consolidate will be filed shortly as the issues are identical and resolve around the right to the possession and title of this property.
4. The pleading does not state facts sufficient to constitute a cause of action. For an unlawful detainer based on a foreclosure under Civ. Code Section 2924 Required pleadings and exhibits are missing. The title has not been duly perfected as Plaintiff failed to comply with this code. The pleading is uncertain. As used in this subdivision, "uncertain" includes ambiguous and unintelligible the Deed and Note are In the Name of as the Lender and payee of the Note and Not this Plaintiff;
5. FANNIE lacks standing to be a plaintiff. The Deed of Trust does not reflect Plaintiff's name at all.
6. The hearing on the demurrer will be based on Code of Civil Procedure §§430.10; the accompanying Demurrer and notice; the following memorandum of points and authorities in support of the Demurrer; all of the pleadings, records, Judicial notices and files in this

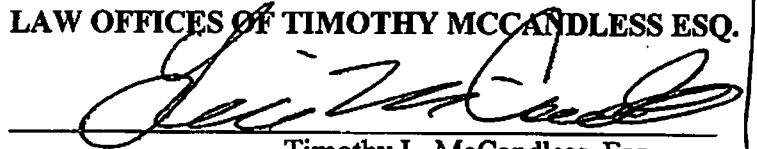
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

action; any matters which may be or are judicially noticed; such supplemental memoranda of points and authorities and documents as may be subsequently filed herein or lodged herein; and such oral and documentary evidence as may be presented at the hearing.

//

Dated: August 10, 2009

LAW OFFICES OF TIMOTHY MCCANDLESS ESQ.



Timothy L. McCandless, Esq.,  
Attorney for Defendants  
MICHELLE CABESAS; LETICIA EDILLO

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97  
98  
99  
100

101  
102  
103  
104  
105  
106  
107  
108  
109  
110  
111  
112  
113  
114  
115  
116  
117  
118  
119  
120  
121  
122  
123  
124  
125  
126  
127  
128  
129  
130  
131  
132  
133  
134  
135  
136  
137  
138  
139  
140  
141  
142  
143  
144  
145  
146  
147  
148  
149  
150  
151  
152  
153  
154  
155  
156  
157  
158  
159  
160  
161  
162  
163  
164  
165  
166  
167  
168  
169  
170  
171  
172  
173  
174  
175  
176  
177  
178  
179  
180  
181  
182  
183  
184  
185  
186  
187  
188  
189  
190  
191  
192  
193  
194  
195  
196  
197  
198  
199  
200

201  
202  
203  
204  
205  
206  
207  
208  
209  
210  
211  
212  
213  
214  
215  
216  
217  
218  
219  
220  
221  
222  
223  
224  
225  
226  
227  
228  
229  
230  
231  
232  
233  
234  
235  
236  
237  
238  
239  
240  
241  
242  
243  
244  
245  
246  
247  
248  
249  
250  
251  
252  
253  
254  
255  
256  
257  
258  
259  
260  
261  
262  
263  
264  
265  
266  
267  
268  
269  
270  
271  
272  
273  
274  
275  
276  
277  
278  
279  
280  
281  
282  
283  
284  
285  
286  
287  
288  
289  
290  
291  
292  
293  
294  
295  
296  
297  
298  
299  
300

301  
302  
303  
304  
305  
306  
307  
308  
309  
310  
311  
312  
313  
314  
315  
316  
317  
318  
319  
320  
321  
322  
323  
324  
325  
326  
327  
328  
329  
330  
331  
332  
333  
334  
335  
336  
337  
338  
339  
340  
341  
342  
343  
344  
345  
346  
347  
348  
349  
350  
351  
352  
353  
354  
355  
356  
357  
358  
359  
360  
361  
362  
363  
364  
365  
366  
367  
368  
369  
370  
371  
372  
373  
374  
375  
376  
377  
378  
379  
380  
381  
382  
383  
384  
385  
386  
387  
388  
389  
390  
391  
392  
393  
394  
395  
396  
397  
398  
399  
400

1 From the facts set forth in the complaint, it is impossible to determine the legal  
2 relationship which exists between and the original lender and Defendant cannot determine from  
3 the fact alleged whether the original lender entered into an assignment to allow PLAINTIFF  
4 MICHELLE CABESAS; LETICIA EDILLO to allow to standing in its place, whether there is an  
5 agency agreement. The facts alleged in the complaint are vague, ambiguous and unintelligible  
6 and as such is subject to demurrer.

7 **III. THE COURT IS EMPOWERED TO SUSTAIN A DEMURRER,**  
8 **WITHOUT LEAVE TO AMEND, WHEREAS HERE, THE PLAINTIFF**  
9 **LACKS STANDING AND JURISDICTION.**

10 California *Code of Civil Procedure* § 430.10 states in relevant part a "party against who a  
11 complaint or cross-complaint has been filed may object, by demurrer to the pleading on any one  
12 or more of the following grounds: (a) the court lacks jurisdiction of the subject cause of action  
13 alleged in the pleading; (b) the person who filed the pleading does not have the legal capacity to  
14 sue; and (e) The pleading does not state facts sufficient to constitute a cause of action.

15 In the Complaint, all of the aforementioned sections are applicable in part or in whole,  
16 necessitating that the demurrer be sustained without leave to amend. California courts rule that  
17 demurrer is proper where a complaint fails to state a cause of actions or whereas here it discloses  
18 a defense that would bar recovery. *Johnson v. Superior Court*, (1994) 25 Cal.App.4th 1564, 1567  
19 *as modified, rehearing denied*. In addition, while it is true that a demurrer admits all material  
20 facts that are poorly plead, California courts have consistently held that "conclusions of law or  
21 fact alleged are not considered in judging its sufficiency." *C & H Food Co. v. Hartford Ins. Co.*,  
22 (1984) 163 Cal.App.3d 1055, 1062; *see also Meggeff v. Donald*, (1981) 123 Cal.App.3d 251,  
23 258.

24 **IV. ESSENTIAL FACTS HAVE NOT BEEN ALLEGED.**

25 **A. The Complaint "provides no factual basis to support its "conclusions of facts"**

26 **In ruling on a Demurrer:** The Court does not, assume the truth of contentions,  
27 deductions, or conclusions of fact or law. Set out in any complaint (*Daar v. Yellow Cab Co.*,  
28 (1967) 67 Cal.2d 695, 713, 63 Cal.Rptr. 724, 433 P.2d 732.) (Emphasis added.)





1 The purpose of a demurrer is to test the legal sufficiency of the complaint... Therefore,  
2 an appellate court employs two separate standards of review on appeal. [Citations.] First, the  
3 complaint is reviewed de novo to determine whether it contains sufficient facts to state a cause of  
4 action. [Citation.] In doing so, the court will accept as true the properly pleaded material factual  
5 allegations of the complaint,... (*Hernandez v. City of Pomona* (1996) 49 Cal.App.4th 1492,  
6 1497.) (Emphasis added.)

7 Plaintiff's complaint do not state as to how they acquired the title and did not provide any  
8 evidence as to the acquisition of the subject property.

9 In *Ankeny v. Lockheed Missiles & Space Co.*, (1979) 88 Cal.App.3d 531, Division  
10 Two of the First District Court of Appeal stated:

11 "Plaintiff's complaint is also uncertain. In the civil complaint, he alleges conclusions of  
12 law such as 'tortiously caused' and 'conspired to tortiously cause' acts of an unspecified nature  
13 which somehow caused plaintiff to be passed over for promotion and deprived of stewardship in  
14 his union. It is settled law that a pleading must allege facts and not conclusions, and that material  
15 facts must be alleged directly and not by way of recital. [Citation.] Also, in pleading, the  
16 essential facts upon which a determination of the controversy depends should be stated with  
17 clearness and precision so that nothing is left to surmise. [Citation.] Those recitals, references to,  
18 or allegations of material facts which are left to surmise are subject to special demurrer for  
19 uncertainty. [Citation.] Such conclusory allegations as are noted above, without facts to support  
20 them, are ambiguous." (Id. at p. 537.) (Emphasis added.)

21 **B. Plaintiffs Claim for relief For Unlawful Detainer fails to State a Cause of Action.**

22 Plaintiff's Claim for Relief is merely a conclusion of alleged facts not stated in their  
23 complaint, or established by the appropriate exhibits, for example the complaint alleges that they  
24 have legal title to the property but fail to explain by facts how they obtained that title through the  
25 foreclosure, what proof they had or have and that a copy thereof is attached and the originals of  
26 these documents are in their possession and will be introduced into evidence at the trial.

27 The proof necessary to support a valid claim under CCP 1161a is the original Note, (not a  
28 Copy) the original of the chain of endorsements, from the back side of the Note (not a copy) and  
proof that they paid a valid consideration for the Note and deed of trust and held this note at the  
time of the foreclosure all of which are a required prerequisite to any UD based on CCP 1161a,



1 as 1161a is based on Plaintiff having good and clear title duly perfected in accordance with  
 2 California law. Since Plaintiff has not made the appropriate allegations to support its entitlement  
 3 to possession based on a valid and duly perfected foreclosure under 2924 if has failed to set forth  
 a claim for relief.

4 Moreover, plaintiff failed to perform a condition precedent as required by California  
 5 Civil Code Section 2924 prior to bringing this action, which mandates that a Notice of Default  
 6 may not be filed until thirty days after contact is made with a borrower as required by paragraph  
 7 (2), or until thirty days after satisfying the Due Diligence requirements as described in  
 8 subdivision (g). The Notice of Trustee's Sale does not have the required Declaration of Due  
 9 Diligence as required by Section 2923.5 stating that the defendant borrower was affirmatively  
 10 contacted in person or by telephone to assess the defendant's financial situation and explore  
 11 options for the defendant to avoid foreclosure.

12 The Trustee that conducted the nonjudicial foreclosure sale was not a holder in due  
 13 course of the original note, because the note was rendered non-negotiable by the manner in  
 14 which the assignment was attempted, invalidating the note, and resulting Trustee's Deed Upon  
 15 Sale, which denies Plaintiff standing to seek possession under California Code of Civil  
 Procedure Section 1161a.

16 Thus, this foreclosure sale is invalid because it was not processed in compliance with the  
 17 states regarding foreclosure.

18 In addition Defendant is informed and believes that the Plaintiff claims to have taken an  
 19 assignment while the property was in default, **Courts all across the United States are now**  
 20 **looking at banks with a hardened eye, seeking answers to what appears to be a fraud on**  
 21 **behalf of Plaintiff and their apparent subornation of third parties to commit perjury.**

22 //

23 //

24 //

25 //

26 //

27 //

28 //

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

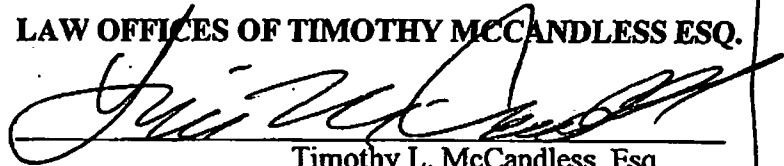
**CONCLUSION**

Defendants MICHELLE CABESAS; LETICIA EDILLO respectfully requests that the court sustain the demurrer without leave to amend due to lack of subject matter jurisdiction over the property, the lack of standing of the Plaintiff to bring the instant action, and for the failure to allege facts sufficient to state the causes of action alleged.

Respectfully submitted.

Dated: August 11, 2009

**LAW OFFICES OF TIMOTHY MCCANDLESS ESQ.**



Timothy L. McCandless, Esq.,  
Attorney for Defendants  
MICHELLE CABESAS  
LETICIA EDILLO

**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF RIVERSIDE**

I am over the age of 18 and not a party to this action. My business address is 15647 Village Drive, Victorville, California 92392, which is located in the county where the mailing described took place.

On August 11, 2009, I served the foregoing document(s) described: **NOTICE AND DEMURRER TO COMPLAINT FOR UNLAWFUL DETAINER, MEMORANDUM OF POINTS AND AUTHORITIES**

Which were served upon:

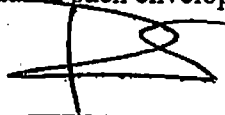
**ATTORNEYS FOR FANNIE MAE  
EDWARD A. TREDER  
BARRETT, DAFFIN, FRAPPIER ET AL  
917 S VILLAGE OAKS DRIVE 253 200  
COVINA CA 91724**

I deposited the foregoing documents in the Federal Express Mail (FedEx). Executed on: in Victorville, California.

(State) XXXX I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

(Federal) I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the addressee(s) above.



BERNIE KIMMERLE