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8 MICHELLE CABESAS; LETICIA EDILLO

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

12 FANNIE MAE ALSO KNOWN AS  
13 FEDERAL NATIONAL MORTGAGE  
14 ASSOCIATION,

15 Plaintiff,

16 vs.

17 MICHELLE CABESAS; LETICIA  
18 EDILLO,

19 Defendants,

20 and DOES 1 through 50 inclusive,

21 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

22 NOTICE IS HEREBY GIVEN that on date and time mentioned above at the Superior  
23 Court of California, County of Solano, Defendants MICHELLE CABESAS and LETICIA  
24 EDILLO [hereinafter "Defendants"] will demurrer to Plaintiff's Complaint for Unlawful  
25 Detainer pursuant to *Code of Civil Procedure* sections 430.10 (b)(e) and (f) on the following  
26 grounds: The first cause of action for Unlawful Detainer fails under the following sections: (b)  
27 The person who filed the pleading does not have the legal capacity to sue. (e) The pleading does  
28

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

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

6 Dated: August 11, 2009

**LAW OFFICES OF TIMOTHY MCCANDLESS ESQ.**

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

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**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

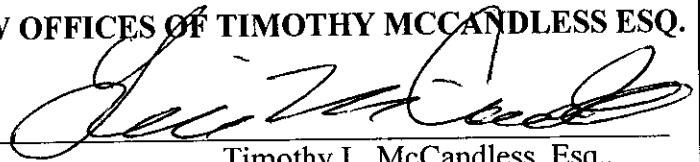
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action; any matters which may be or are judicially noticed; such supplemental memoranda of points and authorities and documents as may be subsequently filed herein or lodged herein; and such oral and documentary evidence as may be presented at the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

//

Dated: August 10, 2009

**LAW OFFICES OF TIMOTHY MCCANDLESS ESQ.**



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

# MEMORANDUM OF POINTS AND AUTHORITIES

## I. INTRODUCTION

1  
2  
3 In this matter, it is impossible to determine who the proper plaintiff should be, and  
4 whether the stated plaintiff has standing, and if the plaintiff is acting for the "benefit" of some  
5 unknown, unnamed third party, why this action is pending in the first instance. Additionally,  
6 although it seems relatively clear that this action follows a non-judicial foreclosure, those naked  
7 facts without more foundation do not support the present plaintiff bringing this action.

8 Defendants MICHELLE CABESAS; LETICIA EDILLO claims that the foreclosure was  
9 fatally flawed by fraud and the failure to strictly comply with the law of California regarding the  
10 institution and completion of non-judicial foreclosures pursuant to California Civil Code section  
11 2924 et seq. It seems that at every possible corner, improprieties controlled the process in a  
12 summary proceeding.

13 At the present time, the issues regarding foreclosures are the legal procedural limitations  
14 and high attrition rate for defendants and their attorney's. The problem also is the defendant's  
15 lack of standing for pleading a wrongful foreclosure due to jurisdiction of the court.

16 Moreover, plaintiff and the investors who have bought chunks may be in some cases  
17 foreign investors, or trusts, or hedge funds or any other vehicle created to market these securities  
18 their true identity have been concealed in violation of California Civil Code Section 2924, et seq.

19 Defendant alleges that plaintiff have no lawful power as Trustee, and that none are the  
20 holder of the Note in the due course at all. Defendant alleges that plaintiff cannot produce an  
21 original note and Trust Deed properly assigned or endorsed to them at or prior to the time of the  
22 commencement of the foreclosure and that they cannot show that any consideration was paid by  
23 them for this note. Plaintiff cannot demonstrate a logical and properly conveyed transfer of the  
24 beneficial interest thus it is not entitled to possession.

25 Also, Defendant will be filing a motion to consolidate the Unlawful Detainer action with  
26 the pending civil action. Thus, there is quite a lot more to this action than is generally apparent  
27 in most unlawful detainer actions.

## 28 II. IT APPEARS FOR THE PLEADING THAT THE WRONG PARTY FILED THE ACTION.

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  
4 a claim for relief.

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

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

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

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

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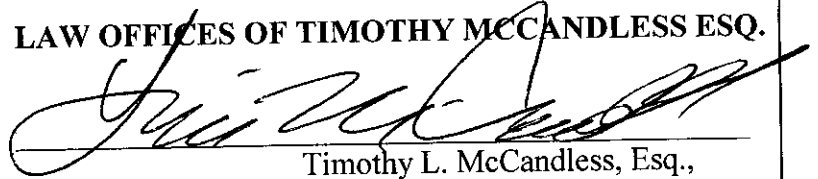
**CONCLUSION**

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

5 Respectfully submitted.

6 Dated: August 11, 2009

7 **LAW OFFICES OF TIMOTHY MCCANDLESS ESQ.**

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9 Timothy L. McCandless, Esq.,  
10 Attorney for Defendants  
11 MICHELLE CABESAS  
12 LETICIA EDILLO

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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:

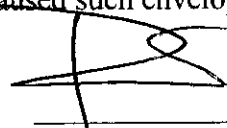
ATTORNEYS FOR FANNIE MAE  
EDWARD A. TREDER  
BARRETT, DAFFIN, FRAPPIER ET AL  
917 S VILLAGE OAKS DRIVE 253 200  
COVINA CA 91724

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