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5	File No.: 1277532		
6	Attorneys for Plaintiff		
7			
8	SUPERIOR COURT OF THE STATE OF CALIFORNIA		
9	COUNTY OF SOLANO, SOLANO JUSTICE CENTER		
10			
11	FANNIE MAE ALSO KNO		CASE NO. VCM 106610
12	FEDERAL NATIONAL M ASSOCIATION,	ORIGAGE	PLAINTIFF'S RESPONSES TO
13	Plaintiff,		REQUESTS FOR ADMISSION, SET ONE
14	VS.		
15			
16	MICHELLE CABESAS AND LETICIA EDILLO, and DOES 1-10,		
17	inclusive,		
18	Defendants.		
19			
20 21	PROPOUNDING PARTY:	DEFENDANT, MICH	IELLE CABESAS
22	111		E MAE ALSO KNOWN AS FEDERAL
23		NATIONAL MORTO	GAGE ASSOCIATION
24	SET NO.:	ONE	
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25	111		
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# PRELIMINARY STATEMENT AND GENERAL OBJECTIONS

The responses set forth below are made solely for the purpose of this action. Each response remains subject to all appropriate objections, including without limitation, objections concerning relevancy, competency, materiality, propriety and admissibility, that would require the exclusion of any statement contained herein or in any document referenced if any such response or document were sought to be introduced into evidence at any hearing or trial in this action. Responding party expressly reserves all such objections.

Responding party has not yet completed its investigation of the facts relating to this action and has not yet completed its preparation for trial. The following responses are based upon information and documents presently known to responding party and are therefore made without prejudice to responding party's right to produce subsequently discovered evidence relating to the proof of presently known material facts and to produce all evidence, whenever discovered, in any form, relating to the proof of subsequently discovered material facts.

Except for explicit facts admitted herein, or in any documents referenced in connection herewith, no admission of any nature whatsoever is intended, and none should be implied or inferred.

Responding party generally objects to each of the above-referenced discovery requests to the extent that it seeks information protected by the attorney-client and/or attorney work product privileges, including without limitation, protected communications between responding party and its counsel and counsel's legal reasoning, theories, opinions, research, impressions and/or conclusions.

Each of the responses below incorporates by reference the foregoing objections, qualifications and limitations. Without waiving any of these objections, qualifications and limitations, responding party responds to the above-referenced discovery requests as follows:

# RESPONSES TO REQUESTS FOR ADMISSION

- -

## **REQUESTS FOR ADMISSION NO. 1:**

Admit or deny that PLAINTIFF never at any time took possession of the original promissory note obligating PLAINTIFF and/or alienable in this instant case.

# **RESPONSE TO REQUESTS FOR ADMISSION NO. 1:**

Objection irrelevant and not and/or not reasonably likely to lead to the discovery of admissible evidence. Old National Financial Services v. Siebert (1987) 194 Cal.App.3d 460; Vella v. Hudgins (1977) 20 Cal.3d 251. This unlawful detainer action is not an action on the promissory note as the only issue of title is the 'technical regularity of the foreclosure sale' in which a Plaintiff who produced a certified copy of the Trustee's Deed Upon Sale which contains the statutory recitals has met its burden of proving duly perfected title "and no further evidence is necessary to establish the title and right to possession of the purchaser" Sorenson v. Hall (1934) 6 C.2d 680; Cobb v. California Bank (1936) 6 C.2d 389; Pacific States Savings & Loan Co. v. O'Neill (1936) 7 C.2d 596; Karrell v. First Thrift of Los Angeles (1951) 104 Cal.App.2d 536. Furthermore there exists no requirement to possess or produce the note in order to conduct a non-judicial foreclosure Neal v Juarez (2007) WL 2140640 (S.D. Cal. 2007); Candelo v. NDEx West, LLC NO CV F08-1916 LJO DLB, 2008 U.S. Dist. LEXIS 105926, 12 (E.D. Cal. Dec. 23, 2008).

Certainly, the Propounding Party may have more latitude in discovery requests in an unlimited jurisdiction matter, although an objection as to this particular request would probably be met with an objection if propounded in that case as well.

# **REQUESTS FOR ADMISSION NO. 2:**

Admit or deny that in your capacity as the trustee that you never took physical possession of the Note executed by PLAINTIFF.

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# **RESPONSE TO REQUESTS FOR ADMISSION NO. 2:**

Objection irrelevant and not and/or not reasonably likely to lead to the discovery of admissible evidence. Old National Financial Services v. Siebert (1987) 194 Cal.App.3d 460; Vella v. Hudgins (1977) 20 Cal.3d 251. This unlawful detainer action is not an action on the promissory note as the only issue of title is the 'technical regularity of the foreclosure sale' in which a Plaintiff who produced a certified copy of the Trustee's Deed Upon Sale which contains the statutory recitals has met its burden of proving duly perfected title "and no further evidence is necessary to establish the title and right to possession of the purchaser" Sorenson v. Hall (1934) 6 C.2d 680; Cobb v. California Bank (1936) 6 C.2d 389; Pacific States Savings & Loan Co. v. O'Neill (1936) 7 C.2d 596; Karrell v. First Thrift of Los Angeles (1951) 104 Cal.App.2d 536. Furthermore there exists no requirement to possess or produce the note in order to conduct a non-judicial foreclosure Neal v Juarez (2007) WL 2140640 (S.D. Cal. 2007); Candelo v. NDEx West, LLC NO CV F08-1916 LJO DLB, 2008 U.S. Dist. LEXIS 105926, 12 (E.D. Cal. Dec. 23, 2008).

Certainly, the Propounding Party may have more latitude in discovery requests in an unlimited jurisdiction matter, although an objection as to this particular request would probably be met with an objection if propounded in that case as well.

#### **REQUESTS FOR ADMISSION NO. 3:**

Admit or deny that you did not provide to the Trustee at the time of the Notice of Default or to anyone the original note and deed of trust executed by PLAINTIFF and with an assignment of these documents to you.

#### **RESPONSE TO REQUESTS FOR ADMISSION NO. 3:**

Objection irrelevant and not and/or not reasonably likely to lead to the discovery of admissible evidence. Old National Financial Services v. Siebert (1987) 194 Cal.App.3d 460; Vella v. Hudgins (1977) 20 Cal.3d 251. This unlawful detainer action is not an action on the promissory note as the only issue of title is the 'technical regularity of the foreclosure sale' in which a Plaintiff who produced a certified copy of the Trustee's Deed Upon Sale which contains the statutory recitals has met its burden of proving duly perfected title "and no further evidence is necessary to establish the

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title and right to possession of the purchaser" Sorenson v. Hall (1934) 6 C.2d 680; Cobb v. California Bank (1936) 6 C.2d 389; Pacific States Savings & Loan Co. v. O'Neill (1936) 7 C.2d 596; Karrell v. First Thrift of Los Angeles (1951) 104 Cal.App.2d 536. Furthermore there exists no requirement to possess or produce the note in order to conduct a non-judicial foreclosure Neal v Juarez (2007) WL 2140640 (S.D. Cal. 2007); Candelo v. NDEx West, LLC NO CV F08-1916 LJO DLB, 2008 U.S. Dist. LEXIS 105926, 12 (E.D. Cal. Dec. 23, 2008).

Certainly, the Propounding Party may have more latitude in discovery requests in an unlimited jurisdiction matter, although an objection as to this particular request would probably be met with an objection if propounded in that case as well.

# **REQUESTS FOR ADMISSION NO. 4:**

Admit or deny that your execution of the notices and foreclosures failed to conform to the provisions of California Civil Code Sections 1624.

# RESPONSE TO REQUESTS FOR ADMISSION NO. 4:

Objection irrelevant and not and/or not reasonably likely to lead to the discovery of admissible evidence. Old National Financial Services v. Siebert (1987) 194 Cal.App.3d 460; Vella v. Hudgins (1977) 20 Cal.3d 251. This unlawful detainer action is not an action on the promissory note, nor the foreclosure of the deed of trust that secured same as the only issue of title is the 'technical regularity of the foreclosure sale' in which a Plaintiff who produced a certified copy of the Trustee's Deed Upon Sale which contains the statutory recitals has met its burden of proving duly perfected title "and no further evidence is necessary to establish the title and right to possession of the purchaser" Sorenson v. Hall (1934) 6 C.2d 680; Cobb v. California Bank (1936) 6 C.2d 389; Pacific States Savings & Loan Co. v. O'Neill (1936) 7 C.2d 596; Karrell v. First Thrift of Los Angeles (1951) 104 Cal.App.2d 536. Furthermore there exists no requirement to possess or produce the note in order to conduct a non-judicial foreclosure Neal v Juarez (2007) WL 2140640 (S.D. Cal. 2007); Candelo v. NDEx West, LLC NO CV F08-1916 LJO DLB, 2008 U.S. Dist. LEXIS 105926, 12 (E.D. Cal. Dec. 23, 2008).

Certainly, the Propounding Party may have more latitude in discovery requests in an unlimited jurisdiction matter, although an objection as to this particular request would probably be met with an objection if propounded in that case as well.

Further objection(s) is made on the ground(s) that Plaintiff was the beneficiary of the deed of trust at the time of the foreclosure sale. Plaintiff did not originate the loan, service the loan, prepare, serve and record the Notice(s) in the foreclosure process. Those actions were taken by entities who are not parties to this limited jurisdiction summary unlawful detainer proceeding, nor can they be as cross-complaints are not allowed in unlawful detainer proceedings.

# **REQUESTS FOR ADMISSION NO. 5:**

Admit or deny that your execution of the notices and foreclosures failed to conform to the provisions of California Civil Code Sections 2923-5 et seq.

### **RESPONSE TO REQUESTS FOR ADMISSION NO. 5:**

Objection irrelevant and not and/or not reasonably likely to lead to the discovery of admissible evidence. Old National Financial Services v. Siebert (1987) 194 Cal.App.3d 460; Vella v. Hudgins (1977) 20 Cal.3d 251. This unlawful detainer action is not an action on the promissory note or the foreclosure of the deed of trust that secured same, as the only issue of title is the 'technical regularity of the foreclosure sale' in which a Plaintiff who produced a certified copy of the Trustee's Deed Upon Sale which contains the statutory recitals has met its burden of proving duly perfected title "and no further evidence is necessary to establish the title and right to possession of the purchaser"

Sorenson v. Hall (1934) 6 C.2d 680; Cobb v. California Bank (1936) 6 C.2d 389; Pacific States

Savings & Loan Co. v. O'Neill (1936) 7 C.2d 596; Karrell v. First Thrift of Los Angeles (1951) 104

Cal.App.2d 536. Furthermore there exists no requirement to possess or produce the note in order to conduct a non-judicial foreclosure Neal v Juarez (2007) WL 2140640 (S.D. Cal. 2007); Candelo v. NDEx West, LLC NO CV F08-1916 LJO DLB, 2008 U.S. Dist. LEXIS 105926, 12 (E.D. Cal. Dec. 23, 2008).

Certainly, the Propounding Party may have more latitude in discovery requests in an unlimited jurisdiction matter, although an objection as to this particular request would probably be met with an objection if propounded in that case as well.

Plaintiff further objects on the basis that the discovery request is vague, ambiguous, unintelligible and calls for a legal conclusion as to the terms "failed to conform to the provisions of California Civil Code Sections 2923-5 et seq."

Without waiving the objections, to the best that Plaintiff can speculate as to the aim of the discovery request, deny.

By:

BARRETT DAFFIN FRAPPIER TREDER & WEISS, LLP

Date: September 1, 2009

AMES T. LEE, Attorneys for Plaintiff

#### **VERIFICATION**

## STATE OF CALIFORNIA, COUNTY OF LOS ANGELES I have read the foregoing PLAINTIFF'S RESPONSES TO REQUESTS FOR ADMISSION, SET ONE and know its contents. **CHECK APPLICABLE PARAGRAPHS** I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true. l am \_\_\_\_ an Officer \_\_\_\_ a partner \_\_\_\_ a \_\_\_\_ a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. \_\_\_\_ The matters stated in the foregoing document are true of my own knowledge, except as to those matters which are stated on information and belief, and as to those matters I believe them to be true. I am one of the attorneys for FANNIE MAE X a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. Jam of ormed and believe and on that ground allege that the matters stated in the foregoing document are true. , at <u>¢o</u>vina Executed on SEPTEMBER 1, 2009 I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. JAMES T. LEE Signature Type or Print Name PRÓOF OF SERV 1013a (3) CCP Revised STATE OF CALIFORNIA, COUNTY OF \_\_\_\_\_, State of California. I am employed in the county of I am over the age of 18 and not a party to the within action; my business address is: ! served the foregoing document described as in this action on by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list: by placing \_\_\_\_ the original \_\_\_\_ a true copy thereof enclosed in sealed envelopes addressed as follows: BY MAIL . California. \*I deposited such envelope in the mail at \_ The envelope was mailed with postage thereon fully prepaid. As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit. \_ , California. \_ , at Executed on \*\*(BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee. \_\_\_ , at Executed on I declare under penalty of perjury under the laws of the State of California that the above is true and correct. (State) (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 Signature Type or Print Name

\*\*(FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)

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#### PROOF OF SERVICE BY FACSIMILE AND U.S. MAIL (C.C.P. 1013a, 2015.5) 1 2 STATE OF CALIFORNIA 3 COUNTY OF LOS ANGELES 4 I, Tracey Lee, declare as follows: 5 I am employed in Los Angeles County, I am over the age of eighteen years and am not a party 6 to the within entitled action; my business address is 917 S. Village Oaks Drive, Suite 200, Covina, 7 California. 8 On September 1, 2009, I served the following: 9 PLAINTIFF'S RESPONSES TO REQUESTS FOR ADMISSION 10 (SET NUMBER ONE) 11 on the interested parties in said action by facsimile and first class mail, postage prepaid, addressed as 12 follows: 13 Timothy L. McCandless, Esq. LAW OFFICES OF TIMOTHY L. MCCANDLESS 14 13240 Amargosa Road Victorville, CA 92392 15 Facsimile No.: 760-382-9956 16 I am "readily familiar" with the firm's practice of collection and processing of correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service 17 on that same day with postage thereon fully prepaid at Covina, California, in the ordinary course of 18 business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing 19 affidavit/declaration. 20 The facsimile machine I used complied with California Rules of Court, rule 2004 and no error was reported by the machine. Pursuant to California Rules of Court, rule 2006(d), I caused the machine 21 to print a transmission record of the transmission. 22 I declare under penalty of perjury and the laws of the State of California that the foregoing is 23 true and correct. 24

Executed on September 1, 2009, at Covipa, California.

Mary Lee

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