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7
8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SANTA CRUZ

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KIMBERLY COX,
Plaintiff,
vs.
RECONTRUST COMPANY, N.A.; all
persons known or unknown claiming any legal
or equitable right, title, estate, lien or interest
in the property described in this Complaint
adverse to COX's title or any cloud upon
COX's title thereto; and DOES 1-100
inclusive,
Defendants.

Case No. CV174201

**RECONTRUST COMPANY, N.A.'s
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DEMURRER TO COMPLAINT OF
KIMBERLY COX**

Date: July 18, 2012
Time: 8:30 a.m.
Dept.: 4

*(Filed concurrently with Notice of Demurrer
and Demurrer; Request to Take Judicial
Notice)*

Action Filed: May 24, 2012
Trial Date: none set

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1 **I. INTRODUCTION**

2 Plaintiff, Kimberly Cox, seeks to have the court determine that her executed note and deed
3 of trust against her property are void, a nullity, and of no effect. She has not repaid her loan of
4 \$544,000.00. Plaintiff brings five causes of action: (1) Void Contract (Note and Deed of Trust);
5 (2) Wrongful Substitution of Trustee; (3) Violation of Unfair Business Practices Act; (4) Slander
6 of Title; and (5) Quiet Title.

7 Oddly, Cox has not sued the loan originator or the current holder. And most importantly,
8 she has already tried to accomplish this same thing during her bankruptcy filing as adversary
9 proceeding, but was denied by a lack of standing. The bankruptcy court held that having filed
10 bankruptcy any pre-petition claims – such as this – became property of the estate and only the
11 Chapter 7 Trustee had standing to prosecute. As will be shown below, Cox cannot escape this
12 problem simply by filing in the state court. She has no standing to file these causes of action and
13 she is prohibited by the doctrine of issue preclusion from litigating that finding here.

14 Even if the bankruptcy had never been filed none of Cox’s causes of action state facts
15 sufficient to sustain a cause of action as they are invalid as a matter of both law and equity.

16 **II. STATEMENT OF FACTS**

17 **A. The Loan And Deed Of Trust**

18 On or about December 10, 2004, Plaintiff Kimberly Cox entered into the subject loan to
19 refinance her property. Pursuant to the note evidencing the loan, Plaintiff promised to pay
20 \$544,000.00 to the lender, American’s Wholesale Lender. (Compl., ¶ 6, Ex. 1.) By signing the
21 note, Plaintiff agreed that, “I understand that Lender may transfer this Note. Lender or anyone
22 who takes this Note by transfer and who is entitled to receive payment under this Note is called
23 the “Note Holder.” (Compl., Ex. 1.) Plaintiff was given the opportunity to review the note and
24 signed it of her own accord. (Compl., ¶11.)

25 In order to secure the note, Plaintiff took out a Deed of Trust against the real property
26 commonly known as 131 Sutphen St., Santa Cruz, CA 95060-1939 (“Property”). (Compl., ¶s 13,
27 14.) Plaintiff signed the Deed of Trust of her own accord. (Compl., ¶13.) The Deed of Trust was
28 recorded on December 21, 2004. (Compl., Ex. 8.) Pursuant to the deed of trust, the beneficiary

1 under the Deed of Trust was Mortgage Electronic Registration Systems, Inc. ("MERS") as
2 nominee for lender America's Wholesale Lender and its successors and assigns. (Compl., Ex. 8.)
3 Pursuant to the Deed of Trust, CTC Real Estate Services was the original trustee. (Compl., Ex. 8.)
4 The Deed of Trust specifically granted MERS, as nominee for lender and its successor and
5 assigns, the right to foreclose and sell the Property. (Compl., Ex. 2.)

6 On November 13, 2009, MERS, as Nominee for America's Wholesale Lender, executed a
7 Substitution of Trustee and Assignment of Deed of Trust. (Compl., ¶13. Ex. 4.) This document
8 substituted defendant Recontrust Company as the new trustee on the Deed of Trust. (Compl., Ex.
9 4.) The document also assigned the Deed of Trust to defendant The Bank of New York Mellon.
10 (Compl., Ex. 4.) The Substitution of Trustee and Assignment of Deed of Trust was recorded on
11 November 24, 2009. (Compl., ¶13, Ex. 4.)

12 Plaintiff had defaulted on her loan obligation and on November 13, 2009, and concurrent
13 with the execution of the Substitution of Trustee and Assignment of Deed of Trust, Recontrust
14 Company recorded a Notice of Default. The Notice of Default contained the Notice of Default
15 Declaration pursuant to California Civil Code 2923.5 and all the documents were recorded on
16 November 24, 2009. (Compl., ¶12. Ex. 3.)

17 On December 30, 2009, a Notice of Trustee's sale was issued by Recontrust Company.
18 The foreclosure sale was to occur on April 8, 2010 at 1:30 p.m. The Notice of Trustee's Sale was
19 recorded on March 17, 2010. (Compl., ¶18. Ex. 7.)

20 **B. The Chapter 7 Bankruptcy**

21 On November 12, 2010, Plaintiff filed for Chapter 7 Bankruptcy in this Court, Case
22 No. 5:10-bk-61716. Plaintiff's schedules list the Property as owned in "Fee Simple" on her
23 Schedule A; instead she listed the debt as unsecured in Schedule F and did not list any lawsuit or
24 related claims as an asset of her estate in Schedule E. (Compl. ¶15 RJN, Ex. A.) The schedules
25 do not list this lawsuit as an asset. (RJN Ex. A.) The trustee has filed a no asset report and no
26 notice of assets was filed. (RJN Ex. B.) No proof of claims have been filed.

27 On April 12, 2011, Cox filed an adversary action in the Bankruptcy Court as Adversary
28 No. 11-05106 against Mortgage Electronic Registration Systems, Inc., the Bank of New York

1 Mellon fka The Bank of New York as Trustee for the Benefit of the Certificateholders CWMBS,
2 Inc. CHL Mortgage Pass-through Trust 2005-2 Mortgage Pass-through Certificates Series,
3 America's Wholesale Lender, Countrywide Home Loans Servicing, L.P, BAC Home Loans
4 Servicing, L.P. (the "Adversary"). Under the Adversary, Cox sought to determine (1) the
5 Validity, Extent, Interest and Secured Status of Lien; (2) to disallow debt and cancel security
6 instrument; (3) for declaratory relief; and (4) quiet title. (RJN, Ex. C Adversary Complaint.)
7 These are relatively the same causes of action here.

8 The bankruptcy court denied the claims and dismissed the action (RJN Ex. D) with
9 prejudice holding:

10 The claims for relief were not listed on the Debtors' bankruptcy
11 schedules. While the trustee has filed a no-asset report – the
12 Chapter 7 trustee has filed a no-asset report, these claims are not as a
13 result of the filing of that no-asset report, deemed to be abandoned
14 to the Debtor. I agree with the Defendants' analysis of Bankruptcy
15 Code Section 554 which is abandonment. Property not listed on the
16 schedules is never administered and thus never abandoned. Since
17 these claims arise from pre-petition events, Mr. Tim (sic), they are
18 pre-petition claims which are property of the bankruptcy estate.
19 Only the Chapter 7 trustee has standing to assert claims which are
20 property of the bankruptcy estate. I also note for the record that the
21 Court declined to sign the abandonment order submitted by the
22 Debtor/the Plaintiff.

23 So the extent that these claims haven't been abandoned, only the
24 Chapter 7 trustee has the authority to assert these claims, so on that
25 ground, your client doesn't have standing if these claims haven't
26 been abandoned.

27 (RJN Ex. E, transcript of hearing on motion to dismiss, page 4, line
28 25 to page 5, line 20).

21 III. GROUND TO SUSTAIN DEMURRER

22 A. LEGAL STANDARD FOR A DEMURRER

23 Code of Civil Procedure ("C.C.P.") §§430.30(a) and 430.50(a) authorizes a response to a
24 complaint by demurrer. (See C.C.P. §§430.30(a) and 430.50(a).) C.C.P. §430.30(a) supports the
25 sustaining of a demurrer when the grounds for the objection appears on the face of the complaint.
26 (See *Id.*, at §§430.30(a).) The grounds for the objection include the failure of the complaint to
27 state facts sufficient to constitute a cause of action. (See *Id.*, at §§430.10(e), (f).)
28

1 For the purposes of testing the sufficiency of the pleadings, the demurrer must admit the
2 truth of all material facts properly pleaded but not the truth of “contentions, deductions or
3 conclusions of law.” (See *Aubry v. Tri-City Hosp. Dist.* (1992) 2 Cal.4th 962, 967.) Conclusory
4 averments and conclusions of law do not constitute a statement of fact upon which relief may be
5 granted. (See *Davaloo v. State Farm Ins. Co.* (2005) 135 Cal.App.4th 409, 415; *Smith v.*
6 *Busniewski* (1952) 115 Cal.App.2d 124.) Allegations referring generally to “defendants” do not
7 state a claim. (See *Falahati v. Kondo* (2005) 127 Cal.App.4th 823, 829.)

8 Furthermore, “facts appearing in exhibits attached to the complaint will also be accepted as
9 true and, if contrary to the allegations in the pleading, will be given precedence.” (*Dodd v.*
10 *Citizens Bank of Costa Mesa* (1990) 222 Cal.App.3d 1624, 1627; *Holland v. Morse Diesel Int’l*
11 *Co.* (2001) 86 Cal.App.4th 1443, 1447 [“If facts appearing in the exhibits contradict those alleged,
12 the facts in the exhibits take precedence.”].)

13 **IV. PLAINTIFF’S ENTIRE COMPLAINT FAILS TO STATE FACTS** 14 **SUFFICIENT TO CONSTITUTE ANY CAUSE OF ACTION**

15 **A. Plaintiff Lacks Standing**

16 Plaintiff’s complaint is barred in its entirety by the doctrine of judicial estoppel or claims
17 preclusion. In this case, the Bankruptcy Court has already determined that Cox waived the right to
18 bring this action. The claim (which was never scheduled) belongs exclusively to the estate
19 through the Chapter 7 trustee. Section 554(d) of Title 11 of the United States Code provides that,

20 Unless the court orders otherwise, property of the estate that is not
21 abandoned under this section and that is not administered in the case
remains property of the estate.

22 Plaintiff filed her Chapter 7 Case on November 12, 2010. Plaintiff has failed to properly
23 schedule this action as an asset in her Bankruptcy Schedules. (RJN, Ex. C page 5, lines 6-16).
24 Plaintiff did exempt this action. As the Bankruptcy Court determined Cox’s claims arose out of
25 pre-petition loans and are property of the estate. Property of the estate that is not abandoned or
26 administered in the case remains property of the estate. (11 U.S.C. §554(d).) The Chapter 7
27 trustee has not abandoned or administered the asset and Cox’s motion to force abandonment was
28 denied. With respect to actions that are property of the estate, the Chapter 7 trustee is the real

1 party in interest and Cox lacks standing to pursue the claims on her own behalf. (*In re Lopez*, 283
2 B.R. 22, 28 (9th Cir. BAP 2002).)

3 Abandonment pursuant to § 554(c) requires that the property to be abandoned is properly
4 scheduled under § 521(1). (*Vreugdenhill v. Navistar Int'l Transp. Corp.*, 950 F.2d 524, 526 (8th
5 Cir.1991) (unless formally scheduled, property is not abandoned at the close of the estate, even if
6 the trustee knew of the existence of the property when the case was closed); *In re Harris*, 32 B.R.
7 125, 127 (Bankr.S.D.Fla.1983) (property not scheduled was not deemed abandoned and remained
8 property of the estate); *In re Medley*, 29 B.R. 84, 86–87 (Bankr.M.D.Tenn.1983) (an unscheduled
9 asset was not deemed abandoned and trustee could reopen case to administer the asset to
10 creditors). Plaintiff never scheduled this asset of the estate. (RJN Ex. A.)

11 Plaintiff is not saved by the entry of her discharge or by the filing of this action in state
12 court rather in Bankruptcy Court. The Plaintiff's claims should be dismissed because she is
13 estopped from pursuing the instant claims because she failed to list this purported action as assets
14 in her bankruptcy schedules. (*Hamilton v. State Farm Fire & Cas. Co.*, (2001) 270 F.3d 778, 783
15 (9th Cir. 2001).) When Cox filed for bankruptcy, she neither listed the claims asserted in her
16 Complaint as assets of her estate nor exempted this action or the Property in her bankruptcy
17 schedules. (RJN, Ex. B) *Harris v. St. Louis Univ.*, 114 B.R. 647, 648 (M.D. Mo. 1990) (holding
18 that a Chapter 7 debtor may assert a pre-petition cause of action only if the Chapter 7 Trustee has
19 abandoned it.)

20 The Bankruptcy Code provides three means for a Chapter 7 Trustee to abandon the
21 property of the estate. First, the Trustee may formally abandon the property after noticed motion.
22 (11 U.S.C. § 554(a).) Second, the Trustee may, under some circumstances, be ordered by the
23 Bankruptcy Court to abandon the property. (11 U.S.C. § 554(b).) Third, the Trustee may abandon
24 the property by operation of law, provided it has been “scheduled” and “not otherwise
25 administered at the time of the closing of the case.” (11 U.S.C. § 554(c).) Here, Plaintiff has
26 neither alleged nor demonstrated that the Trustee has abandoned the property. Plaintiff therefore
27 lacks standing to pursue this action because the Trustee remains the real party in interest and this
28

1 action should be dismissed. *In re Lopez*, 283 B.R. 22, 28 (B.A.P. 9th Cir. 2002); *Haley v. Dow*
2 *Lewis Motors, Inc.* (1999) 72 Cal.App.4th 497, 511, 85 Cal.Rptr.2d 352.

3 The bankruptcy court's judgment has preclusive *res judicata* effect as to whether Cox or
4 the Chapter 7 trustee has standing to assert the causes of action raised in this complaint. It does
5 not matter under federal law that the Adversary is still under appeal. When a federal judgment is
6 involved, the federal rule concerning finality of a judgment on appeal for purposes of *res judicata*
7 differs from the state rule. Under the federal rule, a judgment or order, once rendered, is final for
8 purposes of *res judicata* until it is reversed on appeal, or modified or set aside in the court of
9 rendition. (*Calhoun v. Franchise Tax Bd.* (1978) 20 Cal. 3d 881, 887, 143 Cal. Rptr. 692, 574
10 P.2d 763, cert. denied, 439 U.S. 872; *Abdallah v. United Savings Bank* (1996) 43 Cal. App. 4th
11 1101, 1110, 51 Cal. Rptr. 2d 286, cert. denied, 519 U.S. 1081 (1997) (plaintiffs' cause of action
12 untenable in state court action in light of earlier action that had been dismissed with prejudice in
13 federal district court; although appeal from that judgment was pending, judgment is final for *res*
14 *judicata* purposes until reversed and doctrine of *res judicata* precludes litigation of any claim that
15 could have been raised in federal action.)

16 **B. Plaintiff is Judicially Estopped from Asserting Her Causes of Action**

17 Cox is judicially estopped from asserting these causes of action. In the underlying
18 bankruptcy case, Plaintiff's bankruptcy schedules filed on February 10, 2011 did not list the
19 causes of action asserted in this Complaint as a Personal Property asset in Schedule B. (RJN, Ex.
20 7.) Relying upon the schedules, the Chapter 7 trustee issued a Report of No Distribution on
21 September 12, 2011. (RJN, Ex. D) The Court entered a discharge in favor of Plaintiff on
22 October 12, 2011. (RJN, Ex. E.) "In the bankruptcy context, a party is judicially estopped from
23 asserting causes of action not raised in a reorganization plan or otherwise mentioned in the
24 debtor's schedules or disclosure statements." *Hamilton v. State Farm Fire & Cas. Co.*, (2001) 270
25 F.3d 778, 783 (9th Cir. 2001).

26 In *Hamilton*, the Court of Appeals for the Ninth Circuit judicially estopped a plaintiff from
27 pursuing claims post-discharge because: (1) the debtor clearly asserted inconsistent positions as
28 he failed to list his claims against State Farm as assets on his bankruptcy schedules, and later sued

1 State Farm on the same claims; (2) the bankruptcy court accepted the debtor's prior assertions in
2 that the bankruptcy court granted the debtor a discharge; and (3) Hamilton obtained an unfair
3 advantage by obtaining all the benefits of his Chapter 7 bankruptcy without complying with his
4 affirmative duty to disclose all assets. (*Id.* at 784-85.)

5 The facts here parallel the *Hamilton* case and support judicial estoppel. Plaintiff filed her
6 Chapter 7 Petition on November 12, 2010. She did not list her pre-petition claims against
7 Defendants as assets in his bankruptcy schedules. Relying on those schedules, the Chapter 7
8 Trustee issued a Report of No Distribution, and the Plaintiff received her discharge from the
9 Bankruptcy Court. Cox attempted to bring these claims in her Adversary but was denied because
10 they were unabandoned assets belonging to the trustee. Now Cox asserts an inconsistent position.
11 She failed to properly schedule the claims against Defendants as an asset of her bankruptcy estate,
12 received the benefit of the Trustee's Report and a Discharge and now is pursuing the claims
13 against Defendant post-petition and post-discharge. For the same reason set forth in *Hamilton*,
14 Plaintiff is judicially estopped from pursuing claims she did not disclose to her creditors in his
15 bankruptcy schedules and the Complaint should be dismissed.

16 **C. The First Cause of Action for Defective Note and Deed of Trust are**
17 **Insufficient to Sustain a Cause of Action.**

18 Plaintiff's first allegation is that "the Note was made to a non-existent entity." (Compl.,
19 ¶ 20.) The Note lists the initial Lender as "America's Wholesale Lender" ("AWL"). (Compl., Ex.
20 1.) Plaintiff alleges that AWL did not exist when the loan was granted and therefore could not
21 have entered into the contract. (Compl. ¶11.) Plaintiff asserts that it was not a corporation under
22 New York law until December 16, 2008. (Compl. Ex. 2.) But nowhere in the Note or Deed of
23 Trust does AWL assert that it is a New York corporation.

24 AWL at the time of the loan is and was a fictitious business name of Countrywide Home
25 Loans and was properly registered as such with the County Recorder for Santa Cruz County.
26 (RJN, Ex. F.) If the Corporation is registered but is doing business under a fictitious business
27 name, then the corporation must file a fictitious business name statement in its principal place of
28

1 business. Cal. Bus. & Prof. Code § 17915. AWL was therefore authorized to do business in 2004
2 when the loan was executed—it was a fictitious name for Countrywide Home Loans, Inc.

3 Furthermore, even if AWL was not licensed to do business in California, it would not
4 invalidate the loan. Plaintiff has pled that America’s Wholesale Lender is a licensed New York
5 Corporation. (Compl., ¶ 11; Compl., Ex. 2.) The penalty for failure of a foreign corporation to
6 register in California is that it consents to personal jurisdiction in the state and that it may not
7 bring suit in the state.¹ Cal. Corp. Code § 2203. Neither provision has any effect on this lawsuit.

8 **D. The Second Cause of Action for Defective Substitution of Trustee and**
9 **Notice of Default and Notice of Sale are Insufficient to Sustain a Cause**
10 **of Action**

11 Plaintiff has not sufficiently pled that the Note no longer exists or the chain of title has
12 been broken. First, the facts pled by Plaintiff do not show a broken chain of title. Pursuant to
13 Plaintiff’s RESPA request, a letter was sent to Plaintiff stating that the Note was assigned to Bank
14 of New York Mellon. (Compl., ¶10.) The Deed of Trust was assigned to Bank of New York
15 Mellon. (Compl., Ex. 4.) As it stands, the Note and Deed of Trust are properly both held by the
16 same party. (See Cal. Civ. Code § 2936.)

17 Plaintiff’s only basis for impropriety is the allegation that the Note no longer exists
18 because, when served by purported Qualified Written Requests (“QSR”) under RESPA, both
19 Countrywide and Bank of America only provided what appears to Plaintiff to be a “copy of a
20 copy” of the Note and Deed of Trust while Plaintiff requested a copy of the original. (Compl.,
21 ¶15.) However, neither Countrywide nor Bank of America was required to send a copy of the
22 Note to Plaintiff, nonetheless a copy of the original.

23 A request for information about who owns a loan or a vague inquiry into the application of
24 payments that does not involve any alleged servicing errors does not constitute a valid QWR. As
25 one court has explained, “RESPA does not require a servicer to respond to any question that a
26 borrower may ask—no matter how broad, vague, or far afield.” *DeVary v. Countrywide Home*
27 *Loans, Inc.*, 701 F. Supp. 2d 1096, 1106 (D. Minn. 2010) “Under RESPA, loan servicers are only

28 ¹ A monetary penalty may also be assessed.

1 required to respond to any “qualified written request from the borrower ... for information relating
2 to the servicing of [his] loan” *Id.* (quoting 12 U.S.C. § 2605(e)(1)(A)). The statute defines
3 “servicing” as “receiving any scheduled periodic payments from a borrower pursuant to the terms
4 of any loan . . . and making the payments of principal and interest and such other payments with
5 respect to the amounts received from the borrower as may be required pursuant to the terms of the
6 loan.” 12 U.S.C. § 2605(i)(3). A request about the ownership of a loan has nothing to do with the
7 Plaintiff’s payments on the loan or whether they had been misapplied or miscredited. Such a
8 request, therefore, does not qualify as a QWR under RESPA. (See *Consumer Solutions REO, LLC*
9 *v. Hillery*, 658 F.Supp.2d 1002, 1014 (N.D. Cal. 2009).) Defendants had no duty under RESPA to
10 respond to Plaintiff’s requests for loan documentation. (See *Tina v. Countrywide Home Loans,*
11 *Inc.*, 2008 WL 4790906, at *6 (S.D. Cal. 2008).)

12 In the letter Bank of America sent to Plaintiff, they explained that Plaintiff’s request did
13 not qualify as a QSR but that they would provide some documentation to Plaintiff. (Compl., Ex.
14 17.) They did so, and provided a copy of the Note. No inference can be taken from any alleged
15 failure to comply with Plaintiff’s overbearing requests to their exact letter.

16 **a. MERS Can Validly Assign the Note and Deed of Trust**

17 Cox alleges that MERS could not validly transfer the Note and Deed of Trust. First, this
18 issue has been decided by the State of California that MERS is authorized to act on behalf of the
19 beneficiary if so stated in the Deed of Trust. (*Gomes v. Countrywide Home Loans Inc.*, (2011)
20 192 Cal.App.4th 1149) (Gomes agreed in the deed of trust that MERS was authorized to initiate a
21 foreclosure proceeding).

22 Even if there was a legal basis for an action to determine whether MERS has authority to
23 initiate a foreclosure proceeding, the deed of trust—which Cox has attached to his complaint—
24 establishes as a factual matter that hers claims lack merit. As stated in the deed of trust, Cox
25 agreed by executing that document that MERS has the authority to initiate a foreclosure.

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1 **E. Plaintiff's Third Cause of Action for Violation of Unfair Business Practices**
2 **Fails.**

3 Plaintiff's third cause of action for violation California's Business and Professions Code §
4 17200 ("UCL") identifies no prohibited practice or unfair competition but, instead, merely
5 incorporates by reference the complaint's earlier allegations and declares, without further
6 clarification, that defendants thereby violated the UCL.

7 Because no factual allegations are made that can sustain any wrongful actions this cause of
8 action should be dismissed.

9 **F. Plaintiffs' Fourth Cause of Action for Slander of Title and Fifth Cause of**
10 **Action for Quiet Title Fail for the Similar Reasons.**

11 Plaintiff requests that this Court clear title to her property without any basis for alleging
12 why this Court should nullify the lien on the Property. As Plaintiff has failed to allege any reason
13 why the encumbrance is not proper, this cause of action must fail.

14 Plaintiff seems to be claiming that title should be cleared due to the fact that she claims
15 that the original instruments are void. For the reasons cited above this is not true. No other basis
16 is given for the Quiet Title action and the Cause of Action must fail.


17 Furthermore, even if there was a colorable claim that the Deed of Trust is invalid, this
18 claim would still fail. The first and most obvious defect of this quiet title claim is the missing
19 averment of tender or even the promise of tender of the amounts Plaintiff admits that she
20 borrowed. A trustor cannot "quiet title without discharging his debt. The cloud upon her title
21 persists until the debt is paid." *Aguilar v. Bocci*, 39 Cal. App. 3d 475, 477 (Cal. Ct. App. 1974)
22 (citation omitted).

23 Simply stated, Plaintiff cannot acquire clear and unencumbered title to the property
24 without paying or tendering what he borrowed against the property. Plaintiff asks for relief in
25 equity, but does not offer to do equity herself. Instead, she wants a windfall: the property free of
26 liens, while he also retains, without any obligation to repay, the hundreds of thousands of dollars
27 he received. California law does not countenance such an inequitable result.

28

1 DATED: June 15, 2012

SEVERSON & WERSON
A Professional Corporation

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3
4 By: 
David E. Pinch

5
6 Attorneys for Defendant RECONTRUST COMPANY,
N.A.

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1 **PROOF OF SERVICE**

2 At the time of service, I was over 18 years of age and not a party to this action. I am
3 employed in the County of San Francisco, State of California. My business address is One
4 Embarcadero Center, Suite 2600, San Francisco, CA 94111.

5 On June 15, 2012, I served true copies of the following document(s):

6 **RECONTRUST COMPANY, N.A.'s MEMORANDUM OF POINTS AND
7 AUTHORITIES IN SUPPORT OF DEMURRER TO COMPLAINT OF
8 KIMBERLY COX**

9 on the interested parties in this action as follows:

10 Timothy Y. Fong, Esq.
11 3333 Bowers Avenue, Suite 130
12 Santa Clara, CA 95054

13 Phone: 408.627.7810
14 Fax: 408.457.9417
15 Email: tyfong919@gmail.com

16 Attorney for Plaintiff,
17 Kimberly Cox

18 **BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the
19 persons at the addresses listed above and placed the envelope for collection and mailing, following
20 our ordinary business practices. I am readily familiar with Severson & Werson's practice for
21 collecting and processing correspondence for mailing. On the same day that the correspondence is
22 placed for collection and mailing, it is deposited in the ordinary course of business with the United
23 States Postal Service, in a sealed envelope with postage fully prepaid.

24 I declare under penalty of perjury under the laws of the State of California that the
25 foregoing is true and correct.

26 Executed on June 15, 2012, at San Francisco, California.

27 
28 Imelda Hernandez