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Counsel for Defendants,
Alexander B. & Perla O. Paragas

SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN MATEO

SAN MATEO SOUTHERN BRANCH JUDICIAL DISTRICT

UNLAWFUL DETAINER/ LIMITED JURISDICTION

FEDERAL HOME LOAN MORTGAGE CORPORATION, its assignees and/or successors,

Plaintiff,

v.

ALEXANDER B. PARAGAS, PERLA O. PARAGAS, ARLENE NARI, and DOES 1 through 10, Inclusive,

Defendants.

Case No.: CLJ205995

OPPOSITION TO PLAINTIFF'S MOTION IN LIMINE #2 of 6, TO EXCLUDE EVIDENCE RE: NONCOMPLIANCE WITH CIVIL CODE SECTION 2923.5

Hearing Date: September 24, 2012
Hearing Time: 1:30 PM
Hearing Dept.:
Jud. Off.:

NO STIPULATION TO ANY COMMISSIONER FOR ANY MATTER

JURY TRIAL DEMANDED

Defendants, ALEXANDER B. PARAGAS and PERLA O. PARAGAS, hereby OPPOSE the Plaintiff's MOTION IN LIMINE #2 of 6, TO EXCLUDE EVIDENCE RE: NONCOMPLIANCE WITH CIVIL CODE SECTION 2923.5, as follows:

I.

THE *MABRY* CASE LIMITS ONLY REMEDIES, AND DOES NOT ADDRESS DEFENSIVE DOCTRINES.

Plaintiff has correctly represented that the Court, in *Mabry* v. *Sup. Ct.* (2010), 185 Cal.App.4th 208, held that the only *remedy* for a foreclosing noteholder's violation of Civil Code section 2923.5 is an injunction to postpone the foreclosure sale, until the foreclosing beneficiary complies with the requirements of Civil Code section 2923.5.

The problem is that Plaintiff has confused "remedies" with "defenses". They are sometimes, but not always, the same thing. And the Court in *Mabry* did not say that a foreclosing party's noncompliance with Civil Code section 2923.5 could not be used as a *defense* against a lawsuit, wherein the issue might be relevant.

Here is a vivid example of how California's law treats the same unlawful act in different ways. If a foreign corporation fails to register to do business within the State of California, it "shall not maintain any action or proceeding upon any intrastate business so transacted in any court of this state, commenced prior to compliance wih section Section 2105, until it has complied with the provisions thereof." California Corporations Code subsection 2203(c). (This portion of the Uniform Corporations Code is known as the "Door-Closing Statute", because it "closes the court-house's door" to lawsuits brought by scofflaw foreign corporations.) This language of

the Corporations Code is quite parallel to the language used by the Court in *Mabry, supra,* except that the *right to extrajudicially foreclose* was at issue in *Mabry,* instead of the *right to sue upon a transaction.*

Yet it is equally true, that a foreign corporation's failure to register will *not* render the transaction voidable on that account, and will *not* support an independent suit in equity that is brought to set it aside. The law works just like an independent suit in equity, to set aside an instrument *qua* "foreclosure deed." The unlawful nature of unregistered intrastate business, conducted by an unregistered foreign corporation, thus can serve as a "defensive Shield" but *not* as an "offensive Sword." The same distinction should work equally well in the context of a foreclosure that is *unlawful,* but not *wrongful:* it will not support independent relief, but it will cause certain legal disabilities and hindrances.

Here is another example that is more frequently encountered: Frequently, two parties have a contractual relationship over a long period of time. One party may breach in some manner, and the counter-party may wait so long, that the breach becomes time-barred by the Statute of Limitations. Then, the formerly-breaching party now sues the counter-party. The counter-party raises "Plaintiff's antecedent breach" as a special defense, and further pleads "Set-off", both of which, were they separately actioned, would be in the nature of "compulsory cross-actions", since they arise from the same contract. The Cross-Action would be time-barred, as would an original action, had it been brought earlier by the defendant. Yet those two special defenses are available, notwithstanding that they could not be separately actioned!

To summarize: the California Legislature has created laws in such a way that various unlawful acts give rise to *defenses* that can delay or inhibit certain

remedies or activities by a particular party, and yet not serve as a basis for *affirmative relief* by that party's adversary.

II.

SOME DEFENSES ARE AVAILABLE AGAINST THE INSTANT EVICTION SUIT, THAT ARE NOT AVAILABLE ELSEWHERE.

The same result, as is urged by the defendants here, can be derived by considering the purposes of the "summary proceeding" for eviction, which is enacted as Code of Civil Procedure section 1161a, and comparing it to the great remedy of Ejectment, which is not Common-Law Ejectment[1], but rather is in the nature of the tort of "Ouster". *See Barcroft* v. *Livacich* (1939), 35 Cal.App.2d 710; *B&B Sulphur Co.* v. *Kelley* (1943), 61 Cal.App.2d 3.

We begin by observing that not every kind of titular transfer is mentioned at section 1161a; an example would be a reconveyance by a deed trustee; another would be a collection of "quitclaim deeds" that results in 100% ownership of the property by the collector of the deeds; another could be an order in the Probate Court, or in the Family Law court, "declaring" the title in a certain manner; or it could happen through succession to a person who had the right of survivorship. Doubtless there are many others, that are not mentioned, or provided for, in Code of Civil Procedure section 1161a. In such a situation, the new titular-claimant cannot avail himself or herself of the remedy of section 1161a. *The required elements are not met.*

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[1] This type of action is commonly referred to as an action in ejectment, although there is no such action in California in the technical common-law sense. *Payne* v. *Dewey v. Treadwel* (1860), 16 Cal. 220; *Caperton* v. *Schmidt* (1864), 26 Cal. 479. The rules of law peculiar to the common-law action of ejectment are not applicable. *Caperton, supra.*

Does this mean that a property owner now has no means to get holdovers or squatters off of his or her property? Certainly not! But the property owner must now avail himself or herself of the remedy of (so-called) Ejectment , because the "summary remedy" is not available, due to the plain terms of Code of Civil Procedure section 1161a. And in a suit for Ejectment, the very factor which could block an eviction suit from going forward – lack of description of the necessary alternative circumstances which are listed at section 1161a – becomes *no defense at all* in a lawsuit for Ejectment.

Thus, we have derived a principle, which is known to anyone who did not fall asleep during his or her Third Year law school course in Remedies: a particular defense may operate as against one particular cause of action, but not operate as against another. *Ergo,* the defense that an auction title was unlawful, and thus not "duly perfected", must necessarily work as a defense in a suit under section 1161a, because it is in the nature of a denial of a *prima facie* element whose requirement is created by the statutory language itself, yet that same defense is of no value in an Ejectment suit, which is always available as an alternative remedy.

III.

TO PERMIT A DEFENSE BASED UPON NONCOMPLIANCE WITH CIVIL CODE SECTION 2923.5 WILL NOT ENTAIL "ANY CLOUD ON TITLE".

As noted above, an Unlawful Detainer suit is a statutory creation of a "summary remedy" that is otherwise available through the tort of "Ouster", which in its present form in California is called "Ejectment".

The question of title is often not an issue in an action in ejectment, and is, therefore, often immaterial. *Garner* v. *Marshall* (1858), 9 Cal. 268; *Burke* v.

Table Mountain Water Co. (1859), 12 Cal. 403; *Grady* v. *Early* (1861), 18 Cal. 108. In fact, actual title may be in neither party. *Marshall* v. *Shafter* (1867), 32 Cal. 176. But ejectment may, and frequently does, become the means of trying title, since either party may base his right to possession entirely on some claim on title. *Craviotto* v. *All Persons* (1928), 93 Cal.App. 346; *Zaccaria* v. *Bank of America Nat. Trust & Sav. Assoc.* (1958), 164 Cal.App.2d 715; *Paap* v. *Von Helmholt* (1960), 185 Cal.App.2d 823; *Whitaker* v. *Otto* (1961), 188 Cal.App.2d 619.

The same is true of Unlawful Detainer actions. When there is a Landlord-Tenant relationship, it is axiomatic that the plaintiff's title to the premises is not an issue, and the suit is brought under section 1161. In contrast, under Code of Civil Procedure section 1161a, the very language of the statute places the creation and perfection of the plaintiff's title at issue. As mentioned in another opposition filed by these defendants, the California Supreme Court said in *Cheney* v. *Trauzettel* (1937), 9 Cal. 2d 158, that "[i]t is true that where the purchaser at a trustee's sale proceeds under *section 1161a of the Code of Civil Procedure* he must prove his acquisition of title by purchase at the sale; but it is only to this limited extent, as provided by the statute, that the title may be litigated in such a proceeding. (*Hewitt v. Justice's Court, 131 Cal. App. 439 [21 Pac. (2d) 641]*; *Nineteenth Realty Co. v. Diggs, 134 Cal. App. 278 [25 Pac. (2d) 522]*; *Berkeley Guarantee Building & Loan Assn. v. Cunnyngham, 218 Cal. 714 [24 Pac. (2d) 782].*)" [*Italics* in original, to distinguish from landlord-tenant cases under section 1161.]

As noted above, a noncompliance with Civil Code section 2923.5 cannot serve as the basis to undo a foreclosure that has happened. Therefore, in a suit in "Ejectment" (which is really better called "ouster"), the defense of

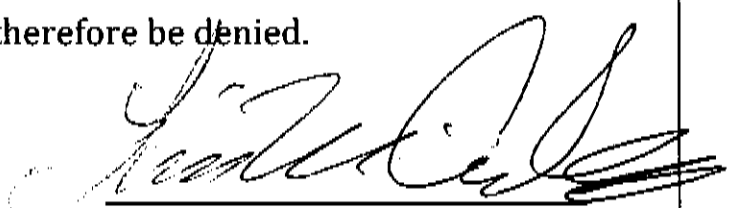
noncompliance will not be availing to generally settle title in the defendant. It will not therefore not be a "cloud upon title", which was the concern of the Court as expressed in the *Mabry* decision. Rather, the noncompliance will be, instead, a "cloud upon the statutorily-required element, under section 1161a, that the foreclosure process have completely comported with law."

CONCLUSION

The instant motion seeks to ratchet up a holding that a particular unlawful act will not support independent relief or remedy, into a larger, and unprecedented, holding, that the same unlawfulness cannot be used as a defense or defensive doctrine. As demonstrated above, this unprecedented doctrine is inconsistent with analogues from elsewhere in California's law, and therefore there is no reason for the court here to indulge the Plaintiff's request that such a novel extension of *Mabry* be used to start shearing off defenses against factual elements that required by the plain language of section 1161a. The motion should therefore be denied.

Respectfully submitted,

DATED: September 15, 2012



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SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN MATEO

SAN MATEO SOUTHERN BRANCH JUDICIAL DISTRICT

UNLAWFUL DETAINER/ LIMITED JURISDICTION

FEDERAL HOME LOAN MORTGAGE CORPORATION, its assignees and/or successors, Plaintiff, v. ALEXANDER B. PARAGAS, PERLA O. PARAGAS, ARLERE NARI, and DOES 1 through 10, Inclusive, Defendants.	**Case No.: CLJ205995** OPPOSITION TO PLAINTIFF'S MOTION FOR BENCH TRIAL, *sub nomine* "MOTION IN LIMINE #1 of 6 TO EXCLUDE CASE FROM BEING HEARD BY JURY" Hearing Date: September 24, 2012 Hearing Time: 1:30 PM Hearing Dept.: Jud. Off.: NO STIPULATION TO ANY COMMISSIONER FOR ANY MATTER JURY TRIAL DEMANDED

Defendants ALEXANDER B. PARAGAS and PERLA O. PARAGAS hereby OPPOSE the Plaintiff's MOTION FOR BENCH TRIAL, *sub nomine* "MOTION IN LIMINE #1 of 6 TO EXCLUDE CASE FROM BEING HEARD BY JURY", as follows:

I.

THE STATUTE DOES NOT CREATE AN ENTITLEMENT TO A JURY TRIAL, BUT RATHER MANDATES ITS USE AS TO FACTUAL ISSUES, WHEN THE RIGHT HAS BEEN PRESERVED.

Plaintiff states that "[t]he general rule is that a defendant in an unlawful detainer action is entitled to a trial by jury pursuant to California Code of Civil Procedure §§592 and 1171; both of which state that in actions where a Plaintiff seeks to recover possession of real property from a Defendant, the Defendant is permitted to request a jury trial on the legal issues as they relate to the facts of the case. " [*See* Plaintiff's Motion, page 2, lines 13-17.] That is false.

This is what section 592 states: "In actions for the recovery of specific, real or personal property, with or without damages, or for money claimed as due upon contract, or as damages for breach of contract, or for injuries, an issue of fact **must** be tried by a jury, unless a jury trial is waived, or a reference is ordered, as provided in this code." [**Emphasis** added.] This is mandatory language, and the only ways out are either *both* parties waiver, or a reference to a referee. There is no language of "request" for a jury, and there is not distinction between plaintiffs and defendants. The use of a jury is mandated, unless one of the two exceptions holds.

The implication is that, in all other civil cases, the use of a jury is discretionary with the court. **But the court lacks the power or "discretion"**

to take away the mandatory use of a jury trial, unless one of the statutorily-enumerated exceptions applies. And neither one applies here.

Similarly, Code of Civil Procedure section 1171 states that "[w]henever an issue of fact is presented by the pleadings, it must be tried by a jury, unless such jury be waived as in other cases. The jury shall be formed in the same manner as other juries in an action of the same jurisdictional classification in the court in which the action is pending." Again, the mandatory word "must" is used; there is no language of "request"; there is no distinction between plaintiff and defendant.

For what it is worth, both sections use the term "action". Without belaboring the point, the modern Unlawful Detainer action is a statutorily-created "summary proceeding" that is in the nature of a traditional common law action for ejectment. For this reason, even were a court not given guidance, and had to characterize the special Unlawful Detainer proceeding, under *DeGarmo* jurisprudence, Unlawful Detainer would *not* be characterized as a legislative enactment of any sort of equitable remedy as it existed in the Common Law. Accordingly, it would be necessary to classify this "summary proceeding" as an "action at law" rather than as a "proceeding in chancery", and therefore the use of a jury would be endorsed by the court.

It has been held that there is a fundamental policy favoring the right to a jury trial, and the right to a jury trial in unlawful detainer cases is so well established, that no exception to the requirement may be created even for small claims court unlawful detainer actions! *Maldonado* v. *Sup. Ct.* (1984), 162 Cal.App.3d 1259.

The Plaintiff is asking the court here to violate not one, but two, separate statutes that mandate the use of the jury, and do not entrust its use

as any sort of discretionary determination by the court. The argument is outrageous.

II.

EQUITABLE ISSUES SHOULD BE DETERMINED BY THE COURT BEFORE THE CASE GOES TO THE JURY, BUT THE PLAINTIFF HAS NOT IDENTIFIED ANY SUCH ISSUES.

The Plaintiff has made a preliminary argument that "[w]hen legal and equitable issues are joined in the same action, the parties are usually entitled to a jury trial on separable legal issues. *Frahm* v. *Briggs* (1970), 12 Cal.App.3d 441, 445." [*See* Plaintiff's Motion, page 3, lines 17-24.] Defendant agrees. In the case law for the closely related remedy of Ejectment, it has been held that issues raised by an equitable defense should be first passed on by the court. *Estrada* v. *Murphy* (1861), 19 Cal. 248 [until an equitable defense is disposed of, assertion of a legal remedy is stayed]; *Johnson* v. *Visher* (1892), 96 Cal. 310.

Plaintiff also contends that a court's disposition of equitable issues could leave nothing to be tried by the jury. [Plaintiff's Motion, page 3, lines 19-22.] Defendant agrees. It is quite possible that the court, having considered an equitable defense, will enjoin further prosecution by the Plaintiff of the action. *See Estrada, supra.*

What, then, are the equitable issues here? The Plaintiff has not told us. The Plaintiff suggests that "defendants cannot overcome the rebuttable presumption that the sale was connected properly." That is an evidentiary question, and has nothing to do with the characterization of a defense, or other issue, as being "legal" or being "equitable".

Plaintiff suggests that defendants "has [*sic!*] no standing to challenge the foreclosure." Whether or not a party has "standing" to raise a defense or press

a claim, is not an "equitable" issue. Whether or not a particular *claim* is equitable or "legal" in nature, has nothing to do with the determination of whether or not a party has "standing" to sue upon it. The same reasoning applies to defenses; their characterization of "legal" or "equitable" has no particular logical connection to the question of who is the "real party in interest" who may raise such a defense. And Plaintiff has adduced no decisional law that suggests that some sort of logical nexus exists, between these two kinds of determinations.

Let us make it real clear to the court here: it is the Plaintiff who bears the "burden of proof" as to the titular issue in this section 1161a case. As the Supreme Court said in *Cheney* v. *Trauzettel* (1937), 9 Cal. 2d 158, "[i]t is true that where the purchaser at a trustee's sale proceeds under *section 1161a of the Code of Civil Procedure* he must prove his acquisition of title by purchase at the sale; but it is only to this limited extent, as provided by the statute, that the title may be litigated in such a proceeding. (*Hewitt v. Justice's Court, 131 Cal. App. 439 [21 Pac. (2d) 641]; Nineteenth Realty Co. v. Diggs, 134 Cal. App. 278 [25 Pac. (2d) 522]; Berkeley Guarantee Building & Loan Assn. v. Cunnyngham, 218 Cal. 714 [24 Pac. (2d) 782].*)" [*Italics* in original, to distinguish from landlord-tenant cases under section 1161.] If the Plaintiff must plead and prove "his acquisition of title by purchase at the sale", then the denial of it is merely a "negative defense". And negative defenses cannot be "equitable" in nature; only *affirmative* defenses could be.

In summary, the defendants' ability, or their lack of ability, to rebut and disprove the Plaintiff's *prima facie* case, that it had "acquisition of title by purchase at the sale", has nothing to do with whether or not this eviction suit contains "equitable issues."

III.

PLAINTIFF HAS RECKLESSLY AND FALSELY CONTENDED THAT A DEFENDANT'S ABILITY TO DENY A PLAINTIFF'S REGULAR TITLE MUST DEPEND UPON THE DEFENDANT'S HAVING TENDERED THE AMOUNT SUPPOSEDLY DUE.

Plaintiff contends that "[i]n order for Defendants to prevail in an Unlawful Detainer action alleging that a foreclosure sale was invalid, he must offer to tender the full amount of the past due debt." [Plaintiff's Motion, page 4, lines 22-24.] Hogwash. As will now be shown, none of Plaintiff's cited authorities hold such a thing.

Crummer v. *Whitehead* (1964), cited by Plaintiff, was NOT an Unlawful Detainer suit. It was a suit to set aside a foreclosure sale. But that sort of relief – setting aside of a sale -- could only be accomplished through a *cross-complaint,* which is not permitted in any unlawful detainer suit. *Cheney* v. *Trauzettel, supra,* and its progeny.

Arnolds Management Corp. v. *Eischen* (1984), 158 Cal.App.3d 575 was a suit in equity to set aside a foreclosure, joined with tort actions for deceit and negligence, due to false representations about the foreclosure sale. It is notable, because it holds open the possibility that the tender rule might not apply, where the culpable conduct concerns not only the sales process, but also concerns the process of giving notice of a default. But one thing is certain: unlawful detainer was never mentioned in the case.

Meetz v. *Mohr* (1904), 141 Cal. 667, cited by Plaintiff, was a suit by the personal representative of a decedent's estate, to enjoin the foreclosure of a deed of trust on "certain real estate in Kern County" that had been executed by the decedent. The Supreme Court, following the treatise High on Injunctions, held that it was proper to dissolve a temporary injunction and to deny a preliminary injunction against foreclosure, when the obligor had not tendered

"what he admits to be due." Again, the case has nothing to do with Unlawful Detainer. And it holds open the possibility that an injunction will issue to stop a foreclosure, when the plaintiff for injunction has "tendered" the amount owed which *is not in dispute.*

As for *Abdallah* v. *United Savings Bank et al.* (1996), 43 Cal.App.4th 1101, the Court's opinion stated that the plaintiffs' "first amended complaint filed on April 11, 1994, included causes of action for fraud, breach of contract, conspiracy, and a RICO violation." There simply was no unlawful detainer involved, and the "failed to tender" doctrine was used against the *plaintiffs.*

In *United States Cold Storage* v. *Great Western Savings & Loan Ass'n.* (1985), 165 Cal.App.3d 1214, after a foreclosure sale by the holder of a senior trust deed (i.e. by defendant Great Western), the junior lienholder sued under circumstances virtually parallel to those of *Arnolds Management, supra.* The Court's opinion in *United States Cold Storage* stated that "Plaintiff alleged two causes of action: failure to conduct the sale lawfully and breach of an implied covenant of good faith and fair dealing." Again, there simply was no unlawful detainer involved, but this time the "failed to tender" doctrine was NOT used against the *plaintiffs!* This case has no application to the instant Unlawful Detainer suit.

Plaintiff cites the case *Nguyen* v. *Calhoun* (2003), 105 Cal.App.4th 428. This case involved the plaintiff's purchase of a home, and the payoff of the loan, on the day before the Trustee auctioned off the home. The escrow company mailed payment and confirmed it by fax, but did not *wire* the funds to the note-holder. Thus the "tender rule" was "strictly applied", as the Plaintiff says, and it should be noted that, again, it was enforced against the *plaintiff.* But the *Nguyen* case had nothing to do with any unlawful detainer

proceeding, and certainly did not state that the "tender rule" could be used against *defendants*.

Every single other case or authority that is cited by Plaintiff does not concern an unlawful detainer case.

No published California case has ever held that a defendant had to "tender" as a condition to raise the defense that a plaintiff had not properly acquired an auction title.

CONCLUSION

This motion is completely misguided. It asks the trial court to exercise powers it does not have – to set aside the right to a jury trial. It asks the court to exercise powers that it does have – to determine equitable issues before the legal issues go to the jury for factual determination – without ever identifying what those equitable issues supposedly are. And finally, it completely misapplies the law from suits in equity to set aside foreclosures, to this Unlawful Detainer proceeding, which is an action at law, albeit a "summary proceeding".

This motion should be denied, though the defendants would agree that the trial court should create a list of any equitable issues that should be determined before the case "goes to the country", as they say.

Respectfully submitted,

DATED: September 15, 2012

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Attorney for Defendant(s): Alexander B. Paragas

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN MATEO

SOUTHERN BRANCH - HALL OF JUSTICE & RECORDS

FEDERAL HOME LOAN MORTGAGE CORPORATION, ITS ASSIGNEES AND/OR SUCCESSORS, Plaintiff(s), VS. ALEXANDER B. PARAGAS; PERLA O. PARAGAS; and DOES 1 -10, Inclusive, Defendant(s)	CASE NO: CLJ205995 PROOF OF SERVICE RE MOTION IN LIMINE TO PRECLUDE THE ADMISSION OF THE TRUSTEE'S DEED UPON SALE Hearing's: Settlement Conference Date : September 20, 2012 Time : 1:30 p.m. Dept. : UDS Hearing's: Motion for Summary Judgment by Defendant Date : September 21, 2012 Time : 9:00 a.m. Dept. : Law and Motions Hearing's: Jury Trial Date : September 24, 2012 Time : 9:00 a.m. Dept. : UDS

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I am resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is LAW OFFICES OF TIMOTHY L. MCCANDLESS, 820 Main Street, Suite #1, Martinez, California 94553. On September 17th, 2012, I served the following document(s) by the method indicated below:

OPPOSITION TO PLAINTIFF'S MOTION FOR BENCH TRIAL, sub nomine "MOTION IN LIMINE #1 OF 6 TO EXCLUDE CASE FROM BEING HEARD BY JURY"

OPPOSITION TO PLAINTIFF'S MOTION IN LIMINE #2 OF 6, TO EXCLUDE EVIDENCE RRE: NONCOMPLIANCE WITH CIVIL CODE SECTION 2923.5

[ ] by transmitting via facsimile on this date from fax number (925) 957-9799 the document(s) listed above to fax number(s) set forth below. The transmission was completed before 5:00 PM and was reported complete and without error. The transmission report, which is attached to this proof of service, was properly issued by the transmitting fax machine. Service by fax was made by agreement of the parties, confirmed in writing. The transmitting fax machine complies with Cal.R.Ct 2003(3).

[X] by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Martinez, California addressed as set forth below. 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 on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more that one day after the date of deposit for mailing in this Declaration.

[ ] by placing the document(s) listed above in a sealed envelope(s) and by causing personal delivery of the envelope(s) to the person(s) at the address(es) set forth below. A signed proof of service by the process server or delivery service will be filed shortly.

[ ] by personally delivering the document(s) listed above to the person(s) set forth below.

[ ] by placing the document(s) listed above in a sealed envelope(s) and consigning it to an express mail service for guaranteed delivery on the next business day following the date of consignment to the address(es) set forth below. A copy of the consignment slip is attached to this proof of service.

Mishaela J. Graves, Esq.
MCCARTHY & HOLTHUS, LLP
1770 Fourth Avenue
San Diego, California 92101
Attorney(s) for Plaintiff: FEDERAL HOME LOAN MORTGAGE CORPORATION, ITS ASSIGNEES AND/OR SUCCESSORS

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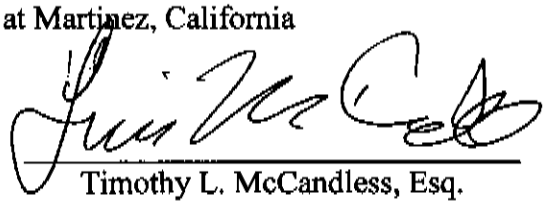
I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on September 17, 2012 at Martinez, California



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