

**ENDORSED FILED
SAN MATEO COUNTY**

SEP 21 2012

Clerk of the Superior Court
By KAREN CALDWELL
DEPUTY CLERK

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Federal Home Loan Mortgage Corporation, its assignees and/or successors
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN MATEO**
10 **SAN MATEO SOUTHERN BRANCH**

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11 Federal Home Loan Mortgage Corporation, its) Case Number: CLJ205995
12 assignees and/or successors,)

13 Plaintiff,)

14 vs.)

15 Alexander B. Paragas, Perla O. Paragas, Arlene)
16 Hari and DOES 1-10, inclusive,)

17 Defendant(s).)

**ORDER TO DENY
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

Limited Civil Case

Date: 9/21/2012

Time: 9:00 am

Dept: ~~presiding~~ Law and Motion

19
20
21 Defendant Alexander B. Paragas' motion for summary judgment came on regularly before
22 the Honorable Judge Joseph E. Bergeron at the above-captioned date, time, and
23 department. After review of the pleadings and records on file herein:

24 ///
25 ///
26 ///

1
2 IT IS HEREBY ORDERED the Court's Order to deny the Defendant's motion for
3 summary judgment.

Triable issues of fact are #2, 3, 4,
12, 17, 15 and 16. NOT IN DISPUTE
AND ADMITTED ARE 1, 5, 6, 7, 8, 9, 10, 11, 14, 17, AND
18.

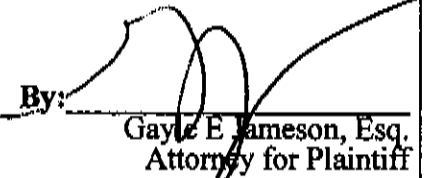
4
5 Dated: 9/21/2012

Joseph E. Bergesen

6 Judge of the Superior Court

7
8
9 Prepared and submitted

10 McCarthy & Holthus, LLP

11
12 By: 
13 Gayle E. Jameson, Esq.
14 Attorney for Plaintiff

9/21/12

15 Federal Home Loan Mortgage Corporation
16 Its Assignees and/or Successors

Gayle E. Jameson

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SEP 21 2012

Clerk of the Superior Court
By KAREN CALDWELL
DEPUTY CLERK

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8 Email: legal@prodefenders.com

9 Attorney for Defendant(s): Alexander B. Paragas

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **IN AND FOR THE COUNTY OF SAN MATEO**

12 **SOUTHERN BRANCH - HALL OF JUSTICE & RECORDS**

13 FEDERAL HOME LOAN MORTGAGE
14 CORPORATION, ITS ASSIGNEES
15 AND/OR SUCCESSORS,

16 Plaintiff(s),

17 VS.

18 ALEXANDER B. PARAGAS; PERLA O.
19 PARAGAS; and DOES 1 -10, Inclusive,

20 Defendant(s)

CASE NO: CLJ205995

DEFENDANT'S SEPARATE STATEMENT
OF UNDISPUTED FACTS AND
SUPPORTING EVIDENCE ON MOTION
FOR SUMMARY JUDGMENT

[Filed concurrently with: Notice of Motion and
Motion for Summary Judgment by Defendant;
Memorandum of Points and Authorities in
Support of Motion for Summary Judgment by
Defendant; Declaration of Alexander B. Paragas
in Support of Motion for Summary Judgment by
Defendant; Request for Judicial Notice in
Support of Defendant's Motion for Summary
Judgment ; [Proposed] Order]

Hearing's:

Date : September 21, 2012

Time : 9:00 a.m.

Dept. : Law and Motions

Reservation No.:

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1 Defendant, ALEXANDER B. PARAGAS ("Defendant"), submits this separate statement of
 2 disputed material facts, together with reference to supporting evidence, in support of Defendant's
 3 Motion for Summary Judgment against Plaintiff FEDERAL HOME LOAN MORTGAGE
 4 CORPORATION, ITS ASSIGNEES AND/OR SUCCESSORS ("Plaintiff").

5 The following disputed facts as to Plaintiff's claim of title show that Plaintiff failed to follow
 6 the requirements of *California Civil Code Section 2924* and therefore the title was not perfected in
 7 Plaintiff and they have no standing to bring this instant case.

8 *Plaintiff's
 Handwritten disputed facts*

DISPUTED FACTS	SUPPORTING EVIDENCE
10 On or about January 24, 2008, Alexander B. 11 Paragas and his wife Perla O. Paragas executed 12 an "Adjustable Rate Note" promising to pay 13 INDYMAC BANK, F.S.B., ("INDYMAC") the 14 sum of \$417,000.00, by monthly payment 15 commencing February 1, 2008, encumbering the 16 property located at 39 SANTA ANA AVENUE, 17 DALY CITY, CALIFORNIA 94015, in the 18 County of San Mateo, California.	Declaration of Alexander B. Paragas and concurrently-filed Request for Judicial Notice ("RJN") Exhibit "1". <i>Unopposed, A signed Deed of Trust (DOT)</i>
17 At the time of the execution Note and Deed of 18 Trust ("DOT"), MORTGAGE ELECTRONIC 19 REGISTRATION ("MERS") was not listed anywhere on Defendant's <u>Note</u> .	Declaration of Alexander B. Paragas. <i>MERS on DOT see page 1 MERS is never on note No legal authority for MERS to be on note</i>
20 Defendant has never been informed or notified 21 by INDYMAC, ONEWEST BANK, F.S.B., 22 ("ONEWEST"), or anyone that MERS sold Defendant's Note to ONEWEST. <i>Def admits working with OWB on loan mod</i>	Declaration of Alexander B. Paragas. <i>MERS didn't sell note MERS is nominee beneficiary under DOT; MERS does not own</i>
24 Defendant found that, there have been several 25 assignments of his Note and DOT, deeds recorded <u>outside</u> of the chain of the title.	Declaration of Alexander B. Paragas. <i>The Note does not need to be produced assignments do not need to be recorded Civil Code 2924 see Calvo vs HSBC (2011) 199 Cal. App. 4th 118</i>
27 First Assignment of Defendant's Note and 28 DOT was executed on or about January 3,	Declaration of Alexander B. Paragas and RJN Exhibit "2".

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*note:
 to comply
 with
 2924
 at 49
 4th 118*

<p>1 2011, in which Mr. BRIAN BURNETT as 2 "Assistant Secretary" of MERS assigned all 3 beneficial interest under DOT to the ONEWST. 5</p>	<p>Unopposed even though assignments do not need to be recorded Civil Code 2934 Calvo vs. HSBC</p>
<p>4 Second Assignment was executed on or about 5 May 24, 2011, in which Mrs. MOLLIE 6 SCHIFFMAN an "Assistant Vice President" of 7 ONEWEST assigned interest of Defendant's Note and DOT to the Plaintiff, herein. 6</p>	<p>Declaration of Alexander B. Paragas and RJN Exhibit "3". Assignment do not need to be recorded Civil Code 2934 Calvo v. HSBC</p>
<p>8 Third Assignment was executed on or about 9 October 31, 2011, in which Mrs. WENDY 10 TRAXLER as "Assistant Secretary" once again 11 assigned same DOT to ONEWEST. 7</p>	<p>Declaration of Alexander B. Paragas and RJN Exhibit "4". Unopposed Assignments do not need to be recorded Civil Code 2934 Calvo v. HSBC</p>
<p>12 Mr. BRIAN BURNETT on or about January 13 13, 2011 executed Substitution of Trustee 14 ("SOT"). 7</p>	<p>Declaration of Alexander B. Paragas and RJN Exhibit "5". Unopposed</p>
<p>15 This fabricated Assignments of DOT and 16 related foreclosure documents by Mr. BRIAN 17 BURNETT, Mrs. MOLLIE SCHIFFMAN and 18 Mrs. WENDY TRAXLER is nothing more than an attempt of Plaintiff and its agents to hijack the mortgage and then foreclose on the property, in violation of California Civil Law. 9</p>	<p>Declaration of Alexander B. Paragas and RJN Exhibits "2," "3," "4," and "5" assignment don't need to be recorded see Civil Code 2934 Calvo vs HSBC (2011) 199 Cal App 4th 118 01/22</p>
<p>20 On or about January 26, 2011, QUALITY 21 LOAN SERVICE CORPORATION, 22 ("QUALITY") recorded Notice of Default ("NOD"). 10</p>	<p>Declaration of Alexander B. Paragas and RJN Exhibit "6". unopposed, Notice of Default was recorded on 1/26/11</p>
<p>23 On or about May 4, 2011, Defendant received 24 Notice of Trustee's Sale ("NTS"). The sale was 25 scheduled for May 23, 2011 at 1:00 p.m., but 26 postponed to several times, until April 23, 2012 at 1:00 p.m. when sale of the Subject Property was executed. 11</p>	<p>Declaration of Alexander B. Paragas and RJN Exhibit "7". Unopposed, the sale was postponed several time per civil code 2924g(c)(1)</p>

1 On or about April 23, 2012 at 12:31 p.m.,
2 Defendant filed voluntary Chapter 13
3 bankruptcy protection in the United States
4 Bankruptcy Court for the Northern District of
California, Case No.: 12-31228.
12

Declaration of Alexander B. Paragas and RJN
Exhibit "8".
4th BK filed by Def. within one year
NO automatic stay 11 USC
362(A)(4)(B)
4th BK dismissed 7/10/12

5
6 On or about April 23, 2012, Defendant also
7 filed the Motion to Extend Automatic Stay
8 pursuant U.S.C. Section 362(c)(3)(B), Notice of
9 Opportunity for Hearing on Motion to Extend
Automatic Stay pursuant U.S.C. Section
10 362(c)(3)(B), and Declaration in Support of
Hearing on Motion to Extend Automatic Stay
pursuant U.S.C. Section 362(c)(3)(B).
13

Declaration of Alexander B. Paragas and RJN
Exhibit "9". Any stay
shall be effective 6/11/12
per order, but there was
no automatic stay as
this was Def's 4th
BK with 12 months
11 USC 362(A)(4)(i)

11 On or about May 4, 2012 QUALITY recorded
12 Trustee's Deed Upon Sale ("TDUS").
14

Declaration of Alexander B. Paragas and RJN
Exhibit "10".
Unopposed

13
14 On or about May 16, 2012, Plaintiff filed this
instant case in violation of Automatic Stay.
15

Declaration of Alexander B. Paragas and the
Court record.
There was NO automatic stay

16 On or about June 11, 2012 U.S. Bankruptcy
17 Judge, Mr. THOMAS E. CARLSON granted
18 Motion to Extend Automatic Stay. The Order
19 stated that Automatic Stay, under 11 U.S.C.
20 Section 362(a), shall remain in force for the
21 duration of Chapter 13 proceeding, until is
22 terminated under 11 U.S.C. Section 362(c)(1),
or a Motion for Relief from Stay is granted
under 11 U.S.C. Section 362(d), no Motion for
Relief has been filed by any Creditor, including
Plaintiff herein.
14

Declaration of Alexander B. Paragas and RJN
Exhibit "11".
If there was any stay, it
was effective 6/11/12
until 7/10/12 when case
was dismissed - NO
action was taken during
this time. However there
was NO automatic stay on
4th BK filed in one year

23
24 On or about July 23, 2012, Defendant filed
25 separate civil unlimited case against a bank and
26 a loan servicing corporation, with respect to the
fabricated Assignments of DOT, and the entire
foreclosure process relating to his real property.
27
17

Declaration of Alexander B. Paragas.

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Plaintiff and ONEWEST have moved, case that
Defendant filed agents them to the United
States District Court, Northern District of
California, and is currently pending.

Declaration of Alexander B. Paragas.

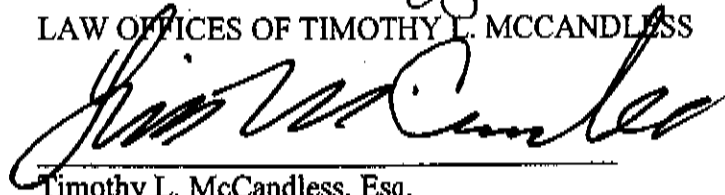
Unopposed, civil case
was removed to federal court by A

Hand written disputed
facts by Gayle Jamson,
attorney for Plaintiff
9/24/12

5
6 Respectfully submitted;

7 DATED: August 24, 2012

LAW OFFICES OF TIMOTHY L. MCCANDLESS



8
9 Timothy L. McCandless, Esq.
Attorney for Defendant(s): Alexander B. Paragas

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