Civil No. B233670
[Superior Court Case No. 56-2010-00378356]

In The Court of Appeal, State of California

SECOND APPELLATE DISTRICT

DIVISION SIX

SUSAN LANGE
Plaintiff and Appellant

vs.

JPMORGAN CHASE BANK, N.A.; *et al.*
Defendant and Respondent.

Appeal From the Superior Court of the State of California
for the County of Ventura

Honorable Mark S. Borrell, Judge Presiding

RESPONDENT JPMORGAN CHASE BANK, N.A.'S OPENING BRIEF

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JPMorgan Chase Bank, N.A., as the acquirer of certain assets and liabilities of
Washington Mutual Bank from the FDIC acting as Receiver

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I. INTRODUCTION

Appellant Susan Lange ("Appellant") appeals from an Order by the trial court ("Court") sustaining the Demurrer of respondent JPMorgan Chase Bank, N.A. ("JPMorgan" or "Respondent"), as the acquirer of certain assets and liabilities of Washington Mutual Bank from the FDIC acting as Receiver, to the Third Amended Complaint ("TAC") of Appellant, without leave to amend, and entering judgment thereafter. The Court's ruling sustaining the Demurrer of JPMorgan should be affirmed because the Court properly concluded that the TAC lacked sufficient facts to state a viable cause of action against JPMorgan. The Court did not abuse its discretion in denying leave to amend because the majority of Appellant's claims failed as a matter of law. Moreover, Appellant failed to demonstrate how any of the deficiencies in pleading could be cured by further amendment. As such, the demurrer was properly sustained without leave to amend.

Appellant also appeals from the judgment entered after the Demurrer, filed by defendants Alta Community Investment III, LLC and Seaside Capital Fund, I, LP (collectively "Co-Defendants"), was sustained without leave to amend. The two appeals have been consolidated.

This action arises out of the purported wrongful foreclosure of the real property located at 276 Running Ridge Trial, Ojai, California 93023 ("Subject Property"). The TAC alleged that JPMorgan wrongfully proceeded with foreclosure on the Subject Property. However, the foreclosure proceedings were conducted in full compliance with pertinent statutory provisions.

Moreover, the TAC consists of nothing more than a lengthy narrative of purported toxic mortgage schemes and fraudulent predatory schemes by the lending industry generally that provides no facts pertaining specifically to Appellant's claims against Respondent. Appellant's opening

brief is similarly based on conjecture and theory rather than facts improperly cites to several internet sources, which are not part of the record, or even related to this case. The inclusion of such conclusory allegations and irrelevant theories of purported industry schemes are no more than a distraction technique by Appellant. The TAC failed in its entirety and, as such, the demurrer was sustained without leave to amend.

In addition to its substantive defect, the TAC was deficient procedurally. Appellant filed an improper pleading not in conformity with the laws of California and the previous Order of the Court. Specifically, the TAC contained three (3) newly alleged causes of action, which were not contained within the Proposed Third Amended Complaint and added two additional Defendants, in contradiction of the March 23, 2011 order of the Court.

Compounding the previously cited infirmities of the appeal, Appellant seemingly seeks to extend her appeal beyond the judgment identified in the Notice of Appeal. (Record on Appeal ["RA"] at 1335) (Notice states appeal as to August 1, 2011 judgment). The August 1, 2011 Judgment of Dismissal does not include any reference to either the Respondent's Motion to Strike, which was deemed moot by the Court's July 11, 2011 Minute Order; nor does the Judgment of Dismissal contain reference to the Court's ruling on its own Motion to Strike, which was entered by Minute Order dated July 11, 2011. (RA at 1306-10, 1324-27). Accordingly, Appellant's inclusion of arguments concerning the Motion to Strike should be disregarded.

As discussed, *infra*, the Court's ruling on demurrer and Judgment of Dismissal should be affirmed.

II. STATEMENT OF THE CASE

Appellant appeals from an order by the Court sustaining JPMorgan's demurrer to the TAC without leave to amend. Appellant essentially

contends that the Court erred in sustaining the demurrer because 1) Appellant ostensibly stated sufficient facts to support her contention that the trustee's sale was "illegal;" 2) the notice of default and notice of trustee's sale were allegedly void; and 3) tender is not required as a predicate to wrongful foreclosure based on a faulty theory that the sale was void and not voidable. Appellant also appears to assert a right to a trial by jury as to the "disputed facts" despite the appeal arising from a ruling upon demurrer and not after a motion for summary judgment.

A. Statement of Facts

The real property that is the subject of this dispute is located 276 Running Ridge Trial, Ojai, California 93023 (previously defined as "Subject Property"). (RA at 1033). Appellant obtained a residential loan in the sum of $1,387,500.00 ("Loan") in connection with purchase of the Subject Property. (RA at 1033-1058). The Loan was secured by a Deed of Trust ("DOT") encumbering the Subject Property that was recorded on May 24, 2006, with the Ventura County Recorder's Office as instrument number 20060524-0110909. *Id.* The DOT identifies Washington Mutual Bank ("WaMu") as the lender and beneficiary, California Reconveyance Company as the trustee, and Appellant as the borrower. *Id.*

Appellant concedes that on September 25, 2008, the Office of Thrift Supervision placed WaMu, the original lender, into receivership and appointed the FDIC as receiver. (RA at 622-623). JPMorgan acquired the beneficial interest in the Loan and DOT when, on September 25, 2008, it entered into a purchase and assumption agreement with the FDIC acting in its corporate capacity as well as receiver for WaMu. (RA at 623). The Purchase and Assumption Agreement between the FDIC and JPMorgan Chase Bank, N.A. dated September 25, 2008, is a matter of public record. [The Purchase and Assumption Agreement is available as follows: http://www.fdic.gov/about/freedom/Washington_Mutual_P_and_A.pdf.]

Appellant defaulted in monthly payments on the Loan. A Notice of Default and Election to Sell Under Deed of Trust ("NOD") was recorded on March 20, 2009, with the Ventura County Recorder's Office, as instrument number 20090320-00043563-0 1/2. (RA at 1060-61). Pursuant to the NOD, as of March 18, 2009 the Loan was in arrears in the amount of $38,379.08. *Id.*

A Substitution of Trustee ("SOT") in connection with the DOT was recorded on May 4, 2009, with the Ventura County Recorder's Office, as instrument number 20090504-00070515-0 1/3. (RA at 1063-65). Pursuant to the SOT, Quality Loan Service Corporation ("Quality Loan") was substituted as the new trustee of the DOT. *Id.*

The default on the Loan was not cured and a Notice of Trustee's Sale ("NOTS") in connection with the DOT was recorded on June 26, 2009, with the Ventura County Recorder's Office, as instrument number 20090626-00106255-0 1/2. (RA at 1067-68).

The Subject Property was sold at trustee's sale on July 14, 2010. (RA at 1070-71). A Trustee's Deed Upon Sale ("TDUS") granting title to the Subject Property to Alta Community Investment III, LLC and Seaside Capital Fund 1, LP was recorded on July 20, 2010, with the Ventura County Recorder's Office, as instrument number 20100728-00110747-0 1/5. *Id.*

B. Procedural History

Appellant filed her initial complaint on August 2, 2010. (RA at 1-68). Appellant was represented by counsel and alleged causes of action 1) To Set Aside Sale, 2) To Cancel Trustee's Deed, 3) To Quiet Title, 4) for an Accounting, and 5) for Infliction of Emotional Distress. *Id.* The complaint also attached nine exhibits. *Id.* On September 8, 2010, JPMorgan filed its demurrer to the complaint. (RA at 74-89). JPMorgan also filed a Request for Judicial Notice as to the relevant title documents. (RA at 90-

135). No opposition was filed to the demurrer; as such, JPMorgan submitted a Reply re: Non-Opposition on October 5, 2010. (RA at 145-50). The Court sustained the demurrer, providing leave to amend within twenty (20) days. (RA at 152).

Appellant, by and through counsel, filed her first amended complaint ("FAC") on October 13, 2010. (RA at 153-73). The FAC contained claims for 1) Fraud, 2) Unfair Business Practice, 3) Covenant of Good Faith and Fair Dealing, 4) Infliction of Emotional Distress, and 5) Cancellation of Deed. *Id.* The FAC incorporated three attachments. *Id.* On November 4, 2010, JPMorgan filed its demurrer to the FAC together with a Request for Judicial Notice of the relevant title documents. (RA at184-246). Co-Defendants also filed a demurrer and motion to strike as to the FAC. (RA at 247-74). On December 3, 2010, Appellant filed an opposition to the demurrer to the FAC, conceding that further revisions to her operative complaint were required. (RA at 297-307). By the time the opposition to the FAC was filed, counsel Roger Senders, Esq. entered his appearance as new counsel for Appellant. *Id.* The opposition was not timely, as it was filed a mere three calendar days prior to the scheduled demurrer hearing. The Court again sustained the demurrer, providing more than one month leave to amend the FAC, until January 4, 2011. (RA at 311-12).

The second amended complaint ("SAC") and Addendum to SAC were filed on or about January 5, 2011. (RA at 314-29, 330-72). The SAC contained claims for 1) To Set Aside Trustee's Sale, 2) To Quiet Title, and 3) For Infliction of Emotional Distress. (RA at 314-29). The Addendum contained four exhibits. (RA at 330-72). JPMorgan filed a demurrer to the SAC on February 7, 2011. (RA at 373-86). JPMorgan also filed a Request for Judicial Notice of the relevant title documents. (RA at 387-432A). Co-Defendants also filed a demurrer and motion to strike as to the SAC. (RA at 433-54).

Thereafter, on February 17, 2011, in lieu of opposition to the demurrer, Appellant filed a motion for leave to amend her SAC, attaching a proposed TAC as yet another attempt to state a viable cause of action. (RA at 455-526). JPMorgan was not served with the Motion to Amend. (RA at 524-26). On February 25, 2011, Appellant filed her opposition to the demurrer of the Co-Defendants. (RA at 542-49). On March 22, 2011, Appellant filed her opposition to the demurrer of JPMorgan. (RA at 598-605). On March 23, 2011, the Court issued a minute order denying Appellant's Motion to Amend to the extent she sought to add new parties; but granted the Motion to Amend as to the additional claims she proposed. (RA at 606-08).

In connection with its order, the Court also noted that the Motion to Amend was filed with insufficient notice and contained other procedural defects. *Id.* Further, the Court noted that Appellant's statement that the matter is highly "complex" was not explained; and that the parties agreed that no discovery had been conducted which would have led to newly discovered information or a shift in the underlying facts or theories of the case. *Id.*

On or about April 1, 2011, Appellant filed her TAC that went well beyond what the Court has permitted. She alleged fourteen claims for: 1) Wrongful Foreclosure, 2) Violation of California Civil Code § 2920 et seq., 3) Unjust Enrichment, 4) RESPA and TILA Violations, 5) Breach of or in the Alternative, No Contract, 6) Fraud and Concealment, 7) Quiet Title, 8) Declaratory and Injunctive Relief, 9) Slander of Title, 10) Breach of the Duty of Good Faith and Fair Dealing, 11) Constructive Trust, 12) Intentional Infliction of Emotional Distress, 13) Respondeat Superior, and 14) Negligence. (RA at 618-683). The TAC also incorporated three exhibits. *Id.*

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Co-Defendants filed a demurrer and a motion to strike as to the TAC, which Appellant opposed. (RA at 687-835). On May 12, 2011, the Court issued a Minute Order as to the demurrer and motion to strike of Co-Defendants. (RA at 1223-27). The demurrer was sustained without leave to amend. *Id.* Judgment was entered on Co-Defendants' demurrer on May 27, 2011. (RA at 1236-40).

The Court also set an Order to Show Cause, for June 27, 2011, as to why the court should not strike the allegations adding new parties to the TAC. (RA at 1223-27).

On May 3, 2011, JPMorgan filed a demurrer and motion to strike the TAC. (RA at 839-1028). JPMorgan also filed a Request for Judicial Notice as to the relevant title documents and court records. (RA at 1029-1193). On June 21, 2011, Appellant filed her opposition to the demurrer of JPMorgan. (RA at 1258-72). Appellant also filed an opposition to the motion to strike. (RA at 1274-80). Despite having received the Court's ruling on Co-Defendants' demurrer, Appellant failed to address the Court's concerns in her oppositions to the demurrer or motion to strike filed by JPMorgan. (RA at 1258-72, 1274-80).

JPMorgan filed its replies to the oppositions on July 5, 2011. (RA at 1283-1301). The Court issued a four page tentative ruling on July 11, 2011. (RA at 1302-05). After considering argument of counsel, the Court affirmed its tentative ruling on July 11, 2011. (RA at 1306-10). The Court sustained JPMorgan's demurrer, without leave to amend. *Id.* The Court held JPMorgan's motion to strike was moot. *Id.* Further, in ruling on its own motion to strike, the Court granted the motion, without leave to amend. *Id.* The Court's Minute Order was issued on July 11, 2011. *Id.*

On August 1, 2011, the Judgment of Dismissal as to JPMorgan was entered. (RA at 1324-27). The Notice of Entry of Judgment was filed and served on August 16, 2011. (RA at 1328-34).

Appellant filed a Notice of Appeal, as to the August 1, 2011 Judgment of Dismissal, on October 13, 2011. (RA at 1335). The October 13, 2011 Notice of Appeal also indicates the appeal relates to "Dismissal of Defendants on the Court's own motion." *Id.*

III. STANDARD OF REVIEW

"On appeal from a judgment dismissing an action after sustaining a demurrer without leave to amend ... [t]he reviewing court gives the complaint a reasonable interpretation, and treats the demurrer as admitting all material facts properly pleaded. The court does not, however, assume the truth of contentions, deductions or conclusions of law." A*ubry v. Tri-City Hospital Dist.,* 2 Cal.4th 962, 967 (1992) (citations omitted).

"The legal sufficiency of the complaint is reviewed de novo." *Montclair Parkowners Assn. v. City of Montclair,* 76 Cal.App.4th 784, 790 (1999). "The judgment must be affirmed 'if any one of the several grounds of demurrer is well taken.' However, it is error for a trial court to sustain a demurrer when the plaintiff has stated a cause of action under any possible legal theory." *Aubry,* 2 Cal.4th at 967 (citations omitted).

A "grant or denial of leave to amend calls for an exercise of discretion on the part of the trial court." *Montclair,* 76 Cal.App.4th at 760. Thus, " [d]enial of leave to amend is reviewed for abuse of discretion." *Id.* (citations committed). "When a demurrer is sustained without leave to amend, we decide whether there is a reasonable possibility that the defect can be cured by amendment: if it can be, the trial court has abused its discretion and we reverse; if not, there has been no abuse of discretion and we affirm. The burden of proving such reasonable possibility is squarely on the plaintiff." *Buller v. Sutter Health,* 160 Cal.App.4th 981, 992 (2008) (citations and internal quotation marks omitted.)

"To show abuse of discretion, plaintiff must show in what manner the complaint could be amended and how the amendment would change the

legal effect of the complaint, i.e., state a cause of action." *Id.*

IV. ISSUES PRESENTED

Appellant suggests there are seven issues presented in the instant appeal. Respondent disagrees. There are really only two issues presented:

1. Did the Court err when it ruled that Appellant had failed to state sufficient facts to support the claims alleged in her third amended complaint?

2. Was it an abuse of the Court's discretion to deny leave to amend?

Appellant's assertion that "whether the court erred in denying plaintiff's request to add new parties to the third amended complaint" as an issue in the instant appeal is inappropriate. Appellant appeals from the August 2011 judgment of dismissal entered, and not the March 2011 order on the motion to amend or the July 2011 order of the court on its own motion to strike. As discussed, *infra* Section V, Appellant's insistence that this inquiry is at issue is improper.

The remainder of the "issues presented" as delineated by Appellant are no more than subordinate inquiries falling within the principal inquiry as to the sufficiency of the allegations within particularized claims and are not independent issues. As such, the substance of the "issues presented" is addressed as applicable under the analysis of the various causes of action presented in the TAC.

V. APPELLANT'S ARGUMENT PERTAINING TO THE PROPRIETY OF AN ORDER DENYING ADDITION OF NEW PARTIES IS NOT PROPERLY BEFORE THE COURT

Appellant's effort to obtain review of the denial of "plaintiff's request to add new parties" *see* Appellant's Brief ("AB") at 2, should be stricken as improper and untimely. Appellant seems to argue that the Court's March 23, 2011 ruling denying leave to amend to add Todd

Kaufman, Luke McCarthy, Mike Szakos & Associates, Nancy Mura, California Reconveyance Co., Quality Loan Service Corp., and LSI Title Company, was improper. *See* AB at 4, 20-21. Although it is unclear whether Appellant seeks review of the March 23, 2011 order denying Appellant's Motion to Amend (RA at 606-08); or the July 11, 2011 order of the Court on its own motion to strike the parties added to the TAC without leave of court (RA at 1306-10), Appellant has no right to appeal either order.

The judgment from which Appellant appeals is related to the ruling on Demurrer; not the March 23, 2011 ruling on the Motion for Leave to Amend. (RA at 606-08, 1335). As the clerk provided notice of entry of the order on the Motion for Leave to Amend on March 24, 2011, any appeal taken therefrom would need to be made no later than May 23, 2011, sixty days after the notice of entry was mailed. *See* California Rules of Court ("CRC"), Rule 8.104. No such appeal was taken. As such, Appellant's request for any review of that order has been waived. *See* CRC, Rule 8.104(a)-(b).

To the extent that Appellant seeks review of the July 11, 2011 order striking the defendants she had added in contravention of the court's prior ruling permitting amendment only to the extent shown by her proposed pleading, the Court should decline review. Typically, an order granting a motion to strike is not an appealable order. *See Yandell v. City of Los Angeles,* 214 Cal. 234, 235 (1931); *see also,* 9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 155, p. 231. In any event, however, when an order on a motion to strike is reviewed on appeal, following entry of final judgment, the appellate court usually applies the abuse of discretion standard. *Leader v. Health Industry of America, Inc.*, 89 Cal.App.4th 603 (2001); *see also, Quiroz v. Seventh Ave. Center*, 140 Cal.App.4th 1256, 1282 (2006); *see also, Walnut Producers of California v. Diamond Foods,* 187 Cal.App.4th

634, 641 (2010). The record here manifests no basis for a finding of abuse of discretion – and Appellant provides none.

Under California Code of Civil Procedure ("CCP"), § 436, "[t]he court may, upon a motion made pursuant to Section 435, or at any time in its discretion, and upon terms as it deems proper: [¶] (a) Strike out any irrelevant, false, or improper matter inserted in any pleading. [¶] (b) Strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court."

Generally speaking, a motion to strike is used to reach pleading defects that are not subject to demurrer. *See Ferraro v. Camarlinghi*, 161 Cal.App.4th 509, 528 (2008); *see also,* 5 Witkin, Cal. Procedure (5th ed. 2008) Pleading, § 1008, p. 420. Further, CCP § 436(b), "is commonly invoked to challenge pleadings filed in violation of a deadline, court order, or requirement of prior leave of court." *Ferraro*, 161 Cal.App.4th at 528. It is indisputably improper for a plaintiff to include new parties or new causes of action that go beyond the scope of a court's order granting leave to amend. *See Harris v. Wachovia Mortgage, FSB*, 185 Cal.App.4th 1018, 1023 (2010); *see also Taliaferro v. Davis*, 220 Cal.App.2d 793, 795 (1963); CCP §436(b).

Here, the Court specifically denied Appellant's motion for leave to bring in additional parties. (RA at 608). Appellant did not appeal that order. Instead, Appellant simply added defendants to the TAC, without leave of Court, and clearly was in contravention of the Court's prior order. *Id.* As Appellant failed to take the appropriate steps to appeal the denial of her motion for leave to amend regarding the addition of parties, and instead, filed a pleading in direct contravention of the Court's order, the Court acted well within its discretion to strike the parties impermissibly added.

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VI. THE COURT PROPERLY SUSTAINED THE DEMURRER TO THE CLAIMS FOR "WRONGFUL FORECLOSURE" AND "VIOLATIONS OF CALIFORNIA CIVIL CODE § 2920 ET SEQ."

Appellant alleged duplicative claims for Wrongful Foreclosure and Violations of Civil Code § 2920 et seq. By each of the aforementioned causes of action, Appellant sought to set aside or otherwise declare void the trustee's sale and resulting trustee's deed upon sale. (RA at 642-5 [TAC ¶¶ 92, 101]). As the claims were cumulative, they are addressed together herein.

Appellant argues that the trustee's sale should be set aside because there was no "valid Notice of Default" as it was recorded prior to the execution of the SOT. *See* AP at 21. Appellant contends that, therefore, the sale was illegal and void. *Id.* Appellant made the same baseless contentions in the TAC. (RA at 630-1, 641 [TAC ¶¶ 50-51, 87]). Appellant's brief, like her opposition to the demurrer, reasserts the same faulty theories. *See* AB at 21-22 (RA at 1259-63). Appellant again argues that JPMorgan was not a "holder in due course," had "no authority to change trustees," and that because the loan was allegedly securitized, that "Chase did not have standing," asserting that the debt had been paid by the secondary market. *See* AB at 21-24.

As the Court correctly ruled, no "express or recorded assignment" is required prior to foreclosure; and a substitution of trustee "may be recorded" but is not ineffective simply because it was recorded later than the notice of default. (RA at 1307) (*citing* Civil Code §§ 2924, 2934; *Ferguson v. Avelo Mortg. LLC,* 195 Cal.App.4th 1618, fn. 5 (2011); *Parcray v. Shea Mortg. Inc.,* 2010 WL 1659369 *11 (E.D. Cal. 2010); *Santens v. Los Angeles Finance Co.,* 91 Cal.App.2d 197, 2020 (1949)). Further, the Court held "the allegations of the complaint and the matters

judicially noticed establish that an affidavit of mailing pursuant to Civil Code § 2934a was recorded with the substitution of trustee." (RA at 1307-08).

Appellant has failed to cite to any binding authority that would dictate a different result. Appellant's repeated assertions, however strenuously made, cannot substitute for law. Inasmuch as her claims are premised on misstatements of the law, they cannot survive.

A. Non-Judicial Foreclosures Are Governed by Civil Code §2924 et seq.

Non-judicial foreclosures are exclusively governed by statutory law, as set forth in Civil Code §2924 *et seq. See Ung v. Koehler,* 135 Cal.App.4th 186, 192 (2005); s*ee also Moeller v Lien,* 25 Cal.App.4th 822, 830 (1994). Every legal requirement for non-judicial foreclosure is set forth in this statutory scheme, which is meant to be an all-inclusive framework. *See* Civil Code § 2924 *et seq.; see also Parcray, supra.*

1. Foreclosure Sales Are Presumptively Valid

Public policy favors the finality of nonjudicial foreclosures sales conducted pursuant to the power of sale contained in a deed of trust. *See, Stevens v. Plumas Eureka Annex Mining Co.,* 2 Cal. 2d 493, 496-97 (1935); *Brown v. Busch,* 152 Cal.App.2d 200, 204 (1987). There is a common law presumption of validity of a foreclosure sale in favor of a bona fide purchaser. *Stevens,* 2 Cal. 2d at 496-97; *Brown,* 152 Cal.App.2d at 204. In addition to the common law presumption, a statutory presumption of validity arises from the recitals in the trustee's deed upon sale that all of the statutory requirements have been satisfied. Civil Code § 2924. In order to overcome the presumption of validity, a trustor challenging a foreclosure sale must prove the presumption is not applicable on equitable grounds, i.e., fraud, and that the he or she has suffered injury or has been prejudiced by the irregularity in the proceedings. *Stevens,* 2 Cal.2d at 496-97; *Humboldt*

Sav. & Loan Soc. v. March, 136 Cal. 321, 324 (1902).

Here, the TDUS contains the necessary recitals, and thus, the statutory presumption of the validity of the foreclosure sale arises. (RA at 1070-74). Appellant has still advanced no legal theory or factual evidence to place validity of the sale into question. Appellant merely recites the same flawed theories, without any legal basis. Per the TDUS, the Trustee complied with all applicable statutory requirements and all duties required by the DOT, including sending proper notices. *Id.* Additionally, the TDUS contains recitals that the Trustee properly exercised its powers under the DOT and sold the Subject Property to the highest bidder, Defendants Alta Community Investments III, LLC and Seaside Capital Fund 1, LP, as 50% tenants in common. *Id.*

Appellant's argument that WaMu was "never the lender" is contradicted by her own allegations and the judicially recognizable documents. (RA at 625, 1033-58). Further, she admits that JPMorgan acquired the assets of WaMu from the FDIC. (RA at 622-23). Thus, Appellant cannot state a legally cognizable claim based upon the allegations asserted, which are entirely based on flawed legal theories.

2. <u>A Non-Judicial Foreclosure Was Proper Because the DOT Granted the Trustee the Power of Sale</u>

The DOT specifically granted the Trustee the power of sale. (RA at 1045, ¶ 22). Appellant's claim that JPMorgan lacked standing, and that the recorded instruments are void, is legally without merit.

Foreclosure can be commenced by the trustee, mortgagee or beneficiary or any of their authorized agents and a person authorized to record the notice of default or the notice of sale. Civil Code § 2924(a)(1) and 2924b(b)(4). To that end, Quality Loan, as an agent for the beneficiary or as trustee under the SOT, was authorized to record the NOD and NOTS. (RA at 1060-68).

Given that Quality Loan was statutorily authorized to record the foreclosure notices, there is clearly no irregularity in the foreclosure proceeding itself to set aside the foreclosure sale or to deem the documents void. *See Nguyen v. Calhoun,* 105 Cal.App.4th 428, 445 (2003). Even assuming a liberal pleading standard, there must be a legal and factual basis to support the cause of action. Here, no legal or factual basis was plead to support a claim for Wrongful Foreclosure or Violation of Civil Code § 2923.5. The Court recognized that Appellant had provided no legal basis for her assertions and thus, properly sustained the demurer without leave to amend. (RA at 1306-10).

3. The Foreclosure Documents Were Valid

Likewise, the Court properly recognized that Appellant's contention that the NOD is invalid because was recorded prior to the SOT is without merit. (RA at 641 [TAC ¶ 87]). California Civil Code § 2934a(b) provides:

> If the substitution is effected after a notice of default has been recorded but prior to the recording of the notice of sale, the beneficiary or beneficiaries shall cause a copy of the substitution to be mailed, prior to the recording thereof, in the manner provided in Section 2924b, to the trustee then of record and to all persons to whom a copy of the notice of default would be required to be mailed by the provisions of Section 2924b. An affidavit shall be attached to the substitution that notice has been given to those persons and in the manner required by this subdivision.

See also, Miller & Starr, Calif. Real Estate 3rd ed. "Deeds of Trust and Mortgages," section 10:8.

Here, the SOT was recorded on May 4, 2009, while the NOD was recorded on March 20, 2009. (RA at 1060-65). The SOT was recorded with an affidavit pursuant to Civil Code § 2934a(b), before the NOTS was recorded on June 26, 2009. (RA at 1063-68). Thus, the SOT complied with

the requirements of Civil Code § 2934a(b). Appellant's claim pertaining to the alleged improper recordation of the NOD prior to the recordation of the SOT is therefore without merit. Appellant has provided no legal or factual basis to dispute this; instead, she relies upon the same failed theories. *See* AB at 21. Therefore, the Court properly sustained the demurrer, without leave to amend as Appellant cannot establish any means by which this legal deficiency can be cured by further amendment.

B. Appellant's Securitization Argument Fails

Appellant's theory that lenders that received funds through loan securitizations or credit default swaps must waive their borrowers' repayment obligations fails as a matter of law. Federal courts have repeatedly rejected this very theory. For example, in *Flores v. Deutsche Bank Nat'l Trust Co.*, 2010 WL 2719848, at *4 (D.Md. July 7, 2010), the borrower argued that his lender "already recovered for [the borrower's] default on her mortgage payments, because various 'credit enhancement policies,' " such as "a credit default swap or default insurance," "compensated the injured parties in full." The court rejected the argument, explaining that the fact that a "mortgage may have been combined with many others into a securitized pool on which a credit default swap, or some other insuring-financial product, was purchased, does not absolve [the borrower] of responsibility for the Note." *Id.* at *5; *see also Fourness v. Mortg. Elec. Registration Sys.*, 2010 WL 5071049, at *2 (D.Nev. Dec.6, 2010) (dismissing claim that borrowers' obligations were discharged where "the investors of the mortgage backed securities were paid as a result of ... credit default swaps and/or federal bailout funds); *Warren v. Sierra Pac. Mortg. Servs.*, 2010 WL 4716760, at *3 (D.Ariz. Nov.15, 2010) ("Plaintiffs' claims regarding the impact of any possible credit default swap on their obligations under the loan ... do not provide a basis for a claim for relief").

Accordingly, Appellant cannot assert a viable claim for wrongful foreclosure based on the allegation that her loan obligations were somehow extinguished by payments received outside the parties' contract through a secondary market. *See also, Rosas v. Carnegie Mortg., LLC,* CV 11-7692 CAS CWX, 2012 WL 1865480 (C.D. Cal. May 21, 2012). The Court correctly relied on the reasoning in the *Zivanic* case. (RA at 1308 [*citing Zivanic v. Washington Mut. Bank., F.A.,* 2010 WL 2354199 (N.D. Cal. 2010)]). The federal district court for the Eastern District of California, among other courts, expressly rejected Appellant's theory that lenders cannot enforce loans that have been securitized. In *Lane v. Vitek Real Estate Industries Group*, 713 F.Supp.2d 1092 (E.D. Cal. 2010), the Federal District Court, in upholding the granting of a Motion to Dismiss claim for Declaratory Relief, stated the following:

> Finally, plaintiffs contend that none of the defendants have authority to foreclose because their loan was packaged and resold in the secondary market, where it was put into a trust pool and securitized. The argument that parties lose their interest in a loan when it is assigned to a trust pool has also been rejected in many districts. *Id.* at 1099.

See also, Bascos v. Federal Home Loan Mortgage Corp., 2011 WL 31357063, at *6 (C.D. Cal 2011) ("As an initial matter, to the extent Plaintiff contends that defendant do not have authority to foreclose because the loan was packaged and resold in the secondary market, this argument is rejected.").

Inasmuch as Appellant has no legal authority to substantiate her claim that the trial court committed reversible error in rejecting her claim in this regard, the Court's ruling should be affirmed.

C. Appellant Failed To Establish The Violation Of Any Statutory Provision

The trial court had no basis on which to rule that Appellant's allegations of wrongful foreclosure and statutory violation of Civil Code §§ 2924 et seq. adequately pled causes of action. Appellant's second theory of relief in the TAC consisted of largely conclusory allegations and an irrelevant and superfluous discussion regarding Attorney General (now Governor) Jerry Brown. (RA at 642-46 [TAC, ¶¶ 93-104]). Throughout the monologue, however, Appellant failed to allege any facts specific to JPMorgan. Appellant resorts to the same flawed approach here, improperly wandering into a lengthy narrative related to a Consent Order agreed to between a number of banks and regulatory agencies that is not part of the record and therefor is not proper for consideration by this Court. *See* AB at 17-19. Appellant's brief is limited to "matters in the record." CRC, Rule 8.204(C). Factual matters that are not part of the record "will not be considered on appeal and should not be referred to in the briefs." *Lona v. Citibank, N.A.*, 202 Cal.App.4th 89, 97 (App. 6 Dist. 2011) (citations omitted).

Further, statements in briefs not supported by references to the record may be disregarded. *Yeboah v. Progeny Ventures, Inc.*, 128 Cal.App.4th 443, *modified on denial of rehearing* (App. 2 Dist. 2005). Thus, in this appeal, the statements and arguments made to documents or statements not contained in the record are properly disregarded.

1. Appellant Failed To Establish A Violation Of Civil Code §2923.5

Although Appellant continues to assert that no declaration in conformity with Civil Code § 2923.5 is contained in the NOD, *see* AB at 24-25, the Court correctly held otherwise. Section 2923.5 only requires that a notice of default include a declaration that the mortgagee,

beneficiary, or authorized agent has contacted the borrower or has tried with due diligence to contact the borrower. *See* Civil Code § 2923.5. Here, the NOD clearly states that "[t]he beneficiary or its designated agent declares that it has contacted the borrower, tried with due diligence to contact the borrower as required by California Civil Code 2923.5[.]" (RA at 1060-61). Moreover, Appellant's own exhibits and allegations defeat her claim. She concedes that she was offered a trial payment agreement, which is attached as Exhibit 2 to her TAC. (RA at 680).

A court will also consider matters of which the court is required to or may take judicial notice and may consider documents attached to a complaint. *See* CCP §§ 430.30 and 430.70; *Del E. Webb Corp. v. Structural Materials Co.*, 123 Cal. App. 3d 593, 604 (Ct. App. 1981) (stating that "[t]he courts...will not close their eyes to situations where a complaint contains allegations of fact inconsistent with attached documents, or allegations contrary to facts which are judicially noticed."). "[T]he contents of an incorporated document...will take precedence over and supersede any inconsistent or contrary allegations set out in the pleading." *Weitzenkorn v. Lesser*, 40 Cal. 2d 778, 785-786 (1953).

In this case, Appellant cannot assert that no contact was made to discuss her financial situation, while at the same time, conceding that a trial payment plan was developed.

Further, as the Court correctly noted, there is no "post-sale remedy for violation of Civil Code section 2923.5" which affords a private right of action, only to the extent that a foreclosure sale can be postponed, while compliance with Section 2923.5 is reached. (RA at 1308 [*citing Mabry v. Superior Court,* 185 Cal.App.4th 208 (2010)]). As Appellant has no legal basis upon which her claim can be predicated in this instance, the Court's ruling should be affirmed.

2. The Compliance Declaration was Adequate and in Statutory Compliance

Appellant's contention that the Section 2923.5 compliance declaration must be signed under the penalty of perjury or "verified" is inaccurate. A declaration for purposes of Section 2923.5 need not be under penalty of perjury and is compliant even though it tracks the statutory language. *See Mabry, supra,* 185 Cal.App.4th 208. As the *Mabry* court noted, if the Legislature had demanded that the declaration be under penalty of perjury, it knew how to so specify. *Id.* at 219-220.

Furthermore, as *Mabry* also held, a declaration in a notice of default that tracks the language of the statute is complaint, particularly noting that "there is no way we can divine an intention on the part of the Legislature that each notice of foreclosure be custom drafted." *Id.* at 235. Thus, contrary to Appellant's allegation, the declaration of compliance contained in the NOD satisfies the requirements under Section 2923.5.

To the extent Appellant relies on the Exhibit of the October 2010 letter by the Attorney General; such letter has no application to Appellant's claim. As discussed, Appellant concedes that there was a financial review and trial plan entered; thus, any allegation to the contrary is factually unsupported by Appellant's own admissions. (RA at 680 [TAC, Exhibit 2]).

Thus, for all the reasons discussed herein, the Court properly sustained the demurrer to the first and second causes of action. As Appellant failed to allege claims that were supported by the facts or the law in this matter, the Court's denial of leave to amend was appropriate.

VII. THE COURT PROPERLY SUSTAINED THE DEMURRER TO THE THIRD CLAIM FOR "UNJUST ENRICHMENT"

The elements of an unjust enrichment cause of action are the "receipt of a benefit and [the] unjust retention of the benefit at the expense of another." *Lectrodryer v. SeoluBank,* 77 Cal.App.4th 723, 726 (2000).

However, "the fact that one person benefits from another is not, by itself, sufficient to require restitution. The person receiving the benefit is required to make restitution only if the circumstances are such that, as between the two individuals, it is unjust for the person to retain it." *First Nationwide Savings v. Perry,* 11 Cal.App.4th 1657, 1662-3 (1992).

In challenging the decision of the trial court, Appellant again advances only the flawed theory that JPMorgan has no interest in the Loan based upon its securitization. *See* AB at 25-26. However, as the Court correctly determined, "payment of a debt owed does not constitute unjust enrichment." (RA at 1308). As discussed *supra,* Section VI, the securitization argument fails as a matter of law. Appellant concedes that JPMorgan acquired the assets of WaMu from the FDIC. (RA at 622-623). Appellant's conclusions are not based in fact or law.

The irrefutable fact remains that, despite receiving the full benefit of the Loan, in the amount of $1,387,500.00, Appellant defaulted on repayment and as a result, foreclosure proceedings were commenced. (RA at 1033-68). In fact, as early as March 18, 2009 the Loan was in arrears in the amount of $38,379.08. (RA at 1060-61). As the TAC and judicially recognizable instruments bear out, Appellant alleged no facts that would establish a factual or legal basis for an unjust enrichment claim. Further, she failed to establish any reasonable possibility that further amendment would change the legal effect or cure the deficiencies. *See Buller, supra.*

As such, the Court's ruling sustaining the demurrer without leave to amend should be affirmed.

VIII. THE FAILURE TO ALLEGE TENDER IS FATAL TO ALL CAUSES OF ACTION PREDICATED ON ALLEGED WRONGFUL FORECLOSURE

Appellant contends that tender is not required because the sale is void and not voidable. *See* AB at 37-38. Appellant's arguments center

around the faulty theory that the SOT and NOD were void and failed to comply with statutory requirements. As discussed herein, such contentions fail as a matter of law. Appellant also continues to assert the theory that JPMorgan never had an interest in the Loan, based on securitization arguments. However, this theory also fails as a matter of law, as discussed, *supra,* Section VI.

Despite Appellant's arguments, the case law is clear that claims based on the alleged wrongful foreclosure sale, unaccompanied by an offer to redeem or tender, do not state a cause of action that a court of equity will recognize. *Copsey v. Sacramento Bank*, 133 Cal. 659, 662 (1901). Specifically the *Copsey* court stated that an offer to redeem must be made to set aside sale. *Id.* (emphasis added). Thus, in order to set aside a trustee's sale, a plaintiff must allege both that the property will be purchased and facts demonstrating the plaintiffs' ability to purchase the property. *Karlsen*, 15 Cal.App.3d at 117-120. "A valid and viable tender of payment of the indebtedness owing is essential to an action to cancel a voidable sale under a deed of trust." *Id.* The court in *Karlsen* held that unless a claimant can establish that he or she has the resources and ability to pay the amount of indebtedness, it would be an exercise in futility to litigate a claim to set aside trustee's sale. *Id.* Further, tender must be one of full performance made unconditionally in good faith, and the plaintiff must have the present ability to perform in order for the tender to be valid. *See, Arnolds Management Corporation v. Eischen*, 158 Cal.App.3d 575, 578-579 (1984); *Civil Code* §§ 1493-1486.

Appellant continues to contend no tender allegation is required. However, the case law cited by Appellant is distinguishable from the case at bar. Appellant relies on *Lona v. Citibank* for the proposition that tender is not required. *See Lona v. Citibank,* 202 Cal.App.4th 89 (2011). However, the *Lona* case is distinguishable because the *Lona* Court ruled tender was

not required due to the plaintiff's allegation based upon unconscionability and "the illegality of the loan contract, and not any irregularity in noticing or conducting the trustee's sale." *Id.* at 115. Further, Lona affirmatively pled those specific exceptions to tender in his operative complaint. *Id.* Such is not the case here. In fact, the *Lona* holding is directly in opposition to this case, wherein Appellant sought to assert a wrongful foreclosure claim purportedly based upon irregularities in the foreclosure proceedings. (RA at 641).

Further, Appellant's only "offer" in opposition to the demurrer was to state that she offered to pay the claimed debt by making monthly payments under the trial plan. (RA at 1263). Such a "tender allegation" is really no tender allegation at all, and is insufficient as a matter of law.

The TAC is devoid of any allegation that Appellant is ready, willing, and able to pay the full debt owed in order to purchase the Subject Property, or the means by which she can and will accomplish any such payment. Further, the total amount of the unpaid balance of the Loan secured by the Subject Property at the time the NOTS was recorded was $1,623,056.98. Appellant's only assertion was that she could make monthly payments; which is insufficient. (Ra at 633, 1263). As such, the Court did not err or abuse its discretion in sustaining the demurrer without leave to amend; and the judgment should be affirmed.

IX. THE COURT PROPERLY SUSTAINED THE DEMURRER TO THE FOURTH CLAIM FOR "RESPA AND TILA VIOLATIONS"

Appellant's Opposition to Respondent's Demurrer stated that "Ms. Lange dismisses CHASE in regard to this cause of action without prejudice." (RA at 1265). It is entirely disingenuous that Appellant is now seeking to reignite this claim against JPMorgan when she did not oppose the demurrer; and instead, stated that she would dismiss the claim as to

JPMorgan. Appellant should be judicially estopped from asserting this claim in the appeal. *See Jackson v. County of Los Angeles*, 60 Cal. App. 4th 171 (1997) (judicial estoppel applies to preclude parties from taking inconsistent positions); *Russell v. Rolfs,* 893 F.2d 1033, 1037 (9th Cir. 1990) (the policy is intended to protect against a litigation playing "fast and loose with the courts"). As Appellant intended to dismiss this claim against JPMorgan, she should now be precluded from appealing the dismissal that followed.

A. Appellant Failed to State A Claim

Even assuming Appellant was not judicially estopped from taking a different position from the one she took before the trial court, which she should be, she failed to state a claim. In support of a claim for violation of the Real Estate Settlement Procedures Act ("RESPA"), 12 U.S.C. § 2601 *et seq.*, Appellant cited to Section 2605 in conclusory fashion and claimed that "[t]hese named defendants have engaged in a practice of non-compliance with RESPA [.]" (RA at 649 [TAC, ¶ 114]). In reviewing the sufficiency of a complaint against a demurrer, the court is to treat the demurrer as admitting all material facts properly pled, but not contentions, deductions, or conclusions of fact or law. *Blank v. Kirwan,* 39 Cal.3d 311, 318 (1985).

Appellant's entire claim is based on an informal discovery request made in or around December 2010-January 2011. *See* AB at 26-27. Appellant asserted that she cannot ascertain bases for her claims because of the alleged deficient response; however, Appellant only served Form Interrogatories and never served any other substantive discovery upon JPMorgan. Appellant's conclusory allegations were insufficient to support a claim for RESPA.

Further, to the extent Appellant asserted the claim as related to the conduct of WaMu, JPMorgan cannot be held liable as a matter of law. In *Armendariz v. JPMorgan Chase Bank, NA*, 2011 WL 1869914 (S.D.Cal.

2011), the District Court found that: "Chase became a successor to WaMu by executing the P & A Agreement, so it is the P&A Agreement which determines the status of Chase as a successor. Section 2.5 of the P & A Agreement clearly establishes that any borrowers claims 'related in any way to any loan' made by WaMu prior to September 25, 2008, were not assumed by Chase when it purchased the assets of WaMu from the FDIC Receiver. Here, the loan was made prior to September 25, 2008, so any claims arising from the origination of the loan may not be maintained against Chase." *Id.* at *4.

Furthermore, in *Ansanelli v. JPMorgan Chase Bank, N.A.*, 2011 WL 1134451 (N.D.Cal. 2011), the District Court found that "clause 2.5 does bar any liability on the first loan arising from actions by WaMu preceding assumption by Chase. Any argument to the contrary by plaintiffs is foreclosed by the agreement[.]" *Id.* at *3; *St. James v. JPMorgan Chase Bank Corp.*, 2010 WL 5349855, at *2-3 (S.D.Cal. 2010); *Caravantes v. California Reconveyance Co.*, 2010 WL 4055560, at *3-4 (S.D.Cal. 2010). Accordingly, Appellant cannot maintain these causes of action against JPMorgan for alleged wrongdoing committed by WaMu prior to September 25, 2008.

B. Appellant Failed to State a TILA Claim

Again, Appellant's Opposition acquiesced to dismissal of this claim and she should be judicially estopped from reasserting this claim herein. Nonetheless, Appellant did not allege any facts demonstrating that JPMorgan violated the Truth in Lending Act ("TILA"), 15 U.S.C. §§ 1601, *et seq.* Rather, she alleged that "WAMU and its agents made material misrepresentations and omissions with respect to the terms of the Subject Mortgage in violation of the Truth in Lending Act..." (RA at 648 [TAC, ¶ 111]). Further, Appellant cannot state a claim for damages because the statute of limitations has expired. Civil penalties under TILA are subject to

a one-year statute of limitations. 15 U.S.C. § 1640(e). Section 1640(e) states, in part: "[a]ny action under this section may be brought in any United States district court, or in any other court of competent jurisdiction, within one year from the date of the occurrence of the violation." (Emphasis added). Here, the Loan closed in May 2006.

In fact, even the generalized allegations regarding "material misrepresentation" are couched in the context of the origination of the Loan in 2006. (RA at 648). Thus, Appellant was required to bring this action by May 2007. However, Appellant did not file this action until in or around August 2010, over three years after the expiration of the statute of limitations. Consequently, any claim for damages based upon allegedly improper or inadequate TILA disclosures is time-barred. *Tucker v. Beneficial Mortg. Co.,* 437 F.Supp.2d 584 (2006).

Based on the foregoing, the Court's ruling sustaining the demurrer to this claim, without leave to amend should be affirmed.

X. THE COURT PROPERLY SUSTAINED THE DEMURRER TO THE FIFTH CLAIM FOR "BREACH OF OR IN THE ALTERNATIVE NO CONTRACT"

The elements for breach of contract are: (1) The existence of a valid contract between the parties; (2) plaintiff's performance, unless excused; (3) defendant's unjustified or unexcused failure to perform; and (4) damages to Plaintiff caused by the breach. *Careau & Co. v. Security Pacific Business Credit, Inc.*, 222 Cal.App.3d 1371, 1388 (1990).

Appellant argues that a "lender's alleged breach of an oral agreement to postpone the trustee's sale is grounds for setting aside a trustee's sale." *See* AB at 27 (purportedly citing *Nguyen v. Calhoun,* 105 Cal.App.4th 428, 444-45). However, Appellant misquotes the *Nguyen* case, which in fact, holds: "the foreclosure sale may not be set aside based on the lender's alleged breach of an oral agreement to postpone the trustee's sale."

Nguyen, 105 Cal.App.4th at 445 (*referencing Karlsen v. American Sav. & Loan Assn.*, 15 Cal.App.3d 112, 121 (1971)) (emphasis added).

Appellant's blatant misrepresentation of the case law in this regard demonstrates the deficiencies of her claim. Appellant's claim is based upon the assertion that the trial plan agreement called for WaMu to "suspend the foreclosure." *See* AB at 27. However, as the Court correctly noted, the trial plan agreement was a temporary measure and required only the suspension of the foreclosure from September – November 2009, and then, only if Appellant complied during that time frame. (RA at 1308-09).

Appellant's own allegations and the recorded instruments clearly demonstrate there was no trustee's sale during that time frame. Even though the NOTS was recorded initially on June 26, 2009, the trustee's sale was ultimately postponed until July 14, 2010. (RA at 1070-71). Further, as the Court determined, the trial plan was no more than a temporary measure that would result in no more than the modification application being "reevaluate[d]." *Id.* Additionally, there is no legal requirement for a lender to provide a loan modification. *See Legislative Comment to Civil Code* §2923.6; *see also Lopez v. Equifirst Corp.*, No. 1:09-cv-1290-AWI-GSA, 2009 WL 3233912, at *3 (E.D.Cal. Oct. 2, 2009); *Tapia v. Aurora Loan Servs.*, No. 1:09-cv-01143 AWI GSA, 2009 WL 2705853, at *2 (E.D.Cal. Aug.25, 2009); *Anaya v. Advisors Lending Group, No.* CV F 09-1191 CJO DLB, 2009 WL 2424037, at *8 (E.D.Cal. Aug.5, 2009). Thus, Appellant could not state a claim for breach of contract as her own allegations and the recorded instruments clearly demonstrate no such breach.

As to count two, Appellant failed to allege any element of a breach of contract action. It appears that Appellant suggests that the original mortgage itself did not constitute a contract because "WAMU expected that LANGE would borrow money, she would not be able to pay it back and then WAMU or its investors would own Running Ridge." (RA at 652 [TAC

¶126]). Appellant again relies on the securitization argument to support her claim. As discussed above, the securitization argument fails as a matter of law.

Further, the case law cited by Appellant related to the sale and transfer of land to support the argument that the underlying loan was never a fully enforceable agreement, is inapplicable in this instance. *See* AB at 29-30. Appellant tries to draw an analogy to the sale of land; however, obtaining a loan to purchase or refinance a property is not an analogous transaction that would require signatures of both the borrower and seller (improperly analogized to lender). Further, to the extent Appellant suggests all the material terms were not included, the recorded instruments contradict such a conclusory allegation. (RA at 1033-58). Indeed, the DOT contains the legally mandated recitals, the loan terms, including an adjustable rate rider, signed by Appellant. *Id.*

Appellant's narrative of conclusory allegations without any facts or applicable legal standards to support them is insufficient to state a claim. Further, Appellant failed to establish any reasonable possibility that further amendment would change the legal effect or cure the deficiencies. *See Buller, supra.* As such, the Court properly sustained the breach of contract claim and the judgment should be affirmed.

XI. THE DEMURRER TO THE SIXTH CLAIM FOR "FRAUD AND CONCEALMENT" WAS PROPERLY SUSTAINED

It is well settled that the elements for fraud and intentional misrepresentation are: 1) a false representation of a material fact, 2) knowledge of the falsity (scienter), 3) intent to induce another into relying on the representation, 4) reliance on the representation, and 5) resulting damage. *Ach v. Finkelstein*, 264 Cal.App.2d 667, 674 (1968).

A plaintiff must plead a fraud claim specifically and not generally. Specific pleading requires facts that clearly allege every element of the

fraud. *Stansfield v. Starkey,* 220 Cal.App.3d 59, 73 (1990). The particularity requirement for fraud mandates pleading facts that "show how, when, where, to whom, and by what means the representations were tendered." *Stansfield v. Starkey, supra,* 220 Cal.App.3d at 73; *Hill Trans. Co. v. Southwest Forest Industries Inc.* 266 Cal.App.2d 702, 707 (1968). The rationale for this strict pleading requirement is not to merely provide notice to the defendant. "The idea seems to be that allegations of fraud involve a serious attack on character, and fairness to the defendant demands that he should receive the fullest possible details of the charge in order to prepare his defense . . . and the policy of liberal construction of the pleadings . . . will not ordinarily be invoked to sustain a pleading defective in any material respect." *Committee on Children's Television, Inc. v. General Foods Corp.* 35 Cal.3d at 216 (1983). Thus, each element of fraud must be alleged factually and specifically. *Tarmann v. State Farm Mutual Auto Insurance Co.*, 2 Cal.App.4th 153, 157 (1991).

In addition, to assert a fraud action against a corporation, a plaintiff must also allege that names of the person or persons who allegedly made the fraudulent representation, their authority to speak, to whom they spoke, what they said or wrote, and when it was said or written. *Tarmann*, 2 Cal.App.4th at 157.

As stated above, the foundational element of a fraud-based claim is the existence of a false representation of material fact. Appellant alleged three counts. Count One, against "WAMU and CHASE" for purported misrepresentations during the origination of the loan; and Count Two against "CHASE" for purported failures to produce documentations and for alleged breaches of the "Trial Plan Agreement[;]" and Count three against "WAMU" for an alleged "fraudulent scheme." (RA at 655-60 [TAC, ¶¶ 135-146]).

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Throughout all three counts, Appellant failed to allege that any authorized representatives of either JPMorgan or WaMu made any such material representations as required pursuant to *Tarmann*.

Appellant contends that WaMu concealed material facts at origination. *See* RA at 32. As discussed herein above, JPMorgan cannot be held liable for the conduct of WaMu as a matter of law. Further, as the Court reasoned, assertions of fraud in the inducement is only a defense against a person who is not a holder in due course. (RA at 1309 [*citing Bank of America Nat. Trust. & Sav. Ass'n v. Lamb Finance.*, 145 Cal.App.2d 702 (1956)]). Thus, in either instance, the claim fails as against JPMorgan as a matter of law.

Count Two contains vague allegations pertaining to document requests without any facts or allegations regarding how such actions constituted fraud and/or material misrepresentations. Further, the remainder of count two is no more than a reiteration of Appellant's breach of contract claim. Appellant failed to allege any fact or legal standard that would establish the failure to produce certain documents constitutes fraud; especially in the context of litigation when no formal document request has been propounded.

Appellant now appears to seek to convert her fraud claim into a promissory estoppel claim; which is inappropriate. Appellant seeks to advance this theory to argue around the Court's ruling that her contentions were directly contrary to the plain language of the trial plan agreement. (RA at 1309). Appellant's contentions in this regard are unavailing. She has not stated a claim for promissory estoppel; moreover, her fraud claim failed as the allegations were plainly contradicted by the clear language of the trial plan that the provided only for a "reevaluat[ion]" of her application. (RA at 680).

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Appellant's reliance on *Aceves* is misplaced. *See* RA at 33-34 (*citing Aceves v. US Bank, N.A.,* 192 Cal.App.4th 218 (2011). In *Aceves*, the borrower fell behind on her mortgage payments and, after receiving a Notice of Default and Election to Sell, she filed for bankruptcy protection under chapter 7 pursuant to 11 U.S.C. §§ 701-784. *Id.* at 223. This, in turn, imposed an automatic stay on the non-judicial foreclosure proceedings. *Id.* The borrower then contacted U.S. Bank, N.A., the beneficiary under the terms of her loan, to discuss possible alternatives to foreclosure following her default on her loan obligations. *See* 192 Cal.App.4th at 223.

In response to the borrower's inquiry, a representative of U.S. Bank, N.A., told her that once her loan was out of bankruptcy, the bank would work with her on a mortgage reinstatement and loan modification. *Id.* At the request of U.S. Bank, N.A., the borrower submitted loan modification documents for consideration. *Id.* The borrower was subsequently told by U.S. Bank, N.A.'s servicing agent, American Home Mortgage Servicing, Inc., that they could not work with her until the stay was lifted. *Id.* In response to this, the borrower failed to oppose the Motion for Relief from Stay and took no other action with respect to her bankruptcy. *Id.* The stay was lifted on December 4, 2008, and the sale proceeded on January 9, 2009. *Id.*

The *Aceves* court held that the terms of the promise were clear: U.S. Bank would not foreclose on Aceves' home without first engaging in negotiations with her to reinstate and modify the loan on mutually agreeable terms. *Id.* The *Aceves* court also found justifiable reliance because the potential benefits to be found for the borrower in working with the bank toward a loan modification exceeded the potential benefits of bankruptcy relief. *Id.* at 227-228. Finally, the *Aceves* court found sufficient detriment in the fact that the borrower did not challenge U.S. Bank, N.A.'s Motion for Relief from Automatic Stay, which ended the

borrower's bankruptcy protection. That is, the borrower could have prevented the sale of the property by opposing the Motion for Relief and preserving the automatic stay. *Id.*

Aceves provides the contrast to the facts of the instant case. The only purported "promise" to be implied from the trial plan was that the trustee's sale would be postponed for a short duration and the Appellant would be further evaluated for a modification. There was no guarantee of a modification; quite the contrary actually. This is insufficient. Appellant attempts to avoid this conclusion by stating that she was "lured into a state of confidence." *See* AB at 34. However, such allegation does little to establish any factual basis for fraud in light of the plain language of the trial plan. To the extent Appellant seeks to extend her fraud claim into a promissory estoppel claim, such an extension is inappropriate at the appellate stage.

As to Count three, on its face, it lack the specificity required to support a claim of fraud or misrepresentation. Count three is only one paragraph long and merely alleges a conclusory "fraudulent scheme set out above..." Thus, Appellant's failure to allege each element of fraud with particularity as required was fatal to her claim. *See, Tarmann* at 157.

As discussed herein, the Court's ruling was justified based upon the pleadings at issue, including the exhibits thereto. Appellant has brought forth no legal or factual argument that would establish facts sufficient to disturb the Court's ruling; and it should be affirmed.

XII. THE DEMURRER TO THE SEVENTH CLAIM FOR "QUIET TITLE" WAS PROPERLY SUSTAINED

Appellant's entire argument in support of her claim to quiet title is that the funds were paid through the secondary market. *See* AB at 35. As discussed above, this legal theory fails.

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In order to successfully allege a cause of action to quiet title, the complaint must be verified and allege: (1) a legal description of the property and its street address or common designation; (2) the title of the plaintiff and the basis of the title; (3) the adverse claims to the title of the plaintiff; (4) the date as of which the determination is sought; and (5) a prayer for the determination of the title of the plaintiff against the adverse claims. Civ. Proc. § 761.020. In this case, the TAC did not set forth the essential elements of a quiet title action.

Appellant cannot state legal title. The court in *Hohn v. Riverside County Flood Control and Water Conservation District*, 228 Cal.App.2d 605, 612-613 (1964) held "[t]he purchaser at the trustee's sale and the grantee in the trustee's deed acquires title free of all rights of the trustor or anyone claiming under or through him, and his title is free of all claims subordinate to the encumbrance pursuant to which this sale was made. (Citation omitted.)" Thus, the foreclosure sale extinguished any ownership interest Appellant may have had. Pursuant to the TDUS, Alta Community Investment III, LLC and Seaside Capital Fund 1, LP acquired the right, title, and interest in the Subject Property. (RA at 1070-74). The foreclosure sale extinguished any ownership interest Appellant had in the Subject Property. Consequently, whatever interest she alleges to have is at best, equitable, and the holder of equitable title cannot maintain a quiet title claim against the legal owner. *See Lewis v. Superior Court*, 30 Cal.App.4th 1850, 1866 (1994); *Stafford v. Ballinger,* 199 Cal.App.2d 289, 294-295 (1962).

Appellant also failed to set forth a basis to render the underlying trustee's sale invalid. *See, Moss Estate Co. v. Adler,* 41 Cal.2d 581 (1953); *Kroeker v. Hulbert*, 38 Cal.2d 261 (1940) ("In actions to cancel a certain instrument it is … essential to allege the facts affecting the validity and invalidity of the instrument which is attacked"); *Sly v. Abbott,* 89 Cal.App.

209, 216 (1928).

Moreover, Appellant failed to allege tender. The action to determine adverse claims is an equitable action, and, generally, equitable principles apply. *Thomson v. Thomson*, 7 Cal. 2d 671 (1936); *Perkins v. Wakeham*, 86 Cal. 580 (1890); *Medeiros v. Medeiros*, 177 Cal. App. 2d 69 (3d Dist. 1960). Based on such equitable principles, a quiet title claim may be denied where a borrower does not offer to reimburse the lender for the unpaid debt in seeking to quiet title against the lender's security interest. *Aguilar v. Bocci*, 39 Cal.App.3d 475 (1974); *see Dool v. The First National Bank Of Calexico,* 207 Cal. 347, 351-352 (1929) (affirming decision of court to require reimbursement of monies advanced by bank to deceased, incompetent mortgagor under a deed of trust in an action to quiet title). Similarly, Appellant would be required to tender the amount of the unpaid debt for which the Subject Property was sold at the trustee's sale in order to state a claim to quiet title. As set forth above, conspicuously absent from the TAC is any such allegation. (RA at 660-661 [TAC, ¶¶ 147-155]).

The Court properly sustained the claim on this basis. Appellant had multiple opportunities to allege tender and failed to do so. Further, as discussed *infra,* Section XIX, she clearly alleged facts to demonstrate tender was not possible. Thus, Appellant failed to establish any reasonable possibility that further amendment would change the legal effect or cure the deficiencies. *See Buller, supra.* For these reasons, the Court's ruling was not in error and leave to amend was not warranted.

XIII. THE COURT PROPERLY SUSTAINED THE DEMURRER TO THE CLAIM FOR "DECLARATORY AND INJUNCTIVE RELIEF"

Section 1060, of the *Code of Civil Procedure* ("Section 1060") sets forth the requirements for declaratory relief. An essential element of a cause of action for declaratory relief is that the parties have "rights or

duties" with respect to property and the existence of an actual and present controversy must be pleaded specifically. General statements about controversy are useless. *Alturas v. Gloster*, 16 Cal.2d 46, 48 (1940). Moreover, an actual controversy involving justifiable questions relating to the rights or obligations of a party must exist. *See Tiburon v. Northwestern Pacific Railroad Co.*, 4 Cal.App.3d 160, 170 (1970).

Under California law, "The fundamental basis of declaratory relief is the existence of an actual, present controversy over a proper subject." *City of Cotati v. Cashman,* 29 Cal.4th 69, 124 (2002). It is axiomatic that a cause of action for declaratory relief serves the purpose of adjudicating future rights and liabilities between parties. *See Cardellini v. Casey*, 181 Cal.App.3d 389 (1986); *Travers v. Louden*, 254 Cal.App.2d 926, 930 (1967). Here, the Court properly noted that the note and DOT were extinguished; thus, there was no necessity to declare such rights and interests. (RA at 1309). The Court also determined injunctive relief was improper given the ruling on the wrongful foreclosure claims; discussed herein above.

Further, Appellant seems to have acquiesced to the Court's ruling as her brief addresses no factual or legal arguments pertaining to this claim. Thus, the ruling should be affirmed.

XIV. THE DEMURRER TO THE NINTH CLAIM FOR "SLANDER OF TITLE" WAS PROPERLY SUSTAINED

Appellant did not oppose the demurrer to this claim; thus, the demurrer was sustained without leave. (RA at 1309). Not only did Appellant not oppose the demurrer to this claim, Appellant "withdr[ew]" the cause of action against JPMorgan. (RA at 1268). As Appellant withdrew the claim against JPMorgan, she should be judicially estopped from seeking to reignite the claim in this appeal. The ruling should be affirmed.

Moreover, even assuming *arguendo,* that Appellant did not withdraw the claim; the judgment should still be affirmed. The elements for slander of title are: (1) publication; (2) absence of justification; (3) falsity; and (4) direct pecuniary loss. *Seeley v. Seymour*, 190 Cal.App.3d 844, 858 (1987); *Howard v. Schaniel*, 113 Cal.App.3d 256, 263-264 (1980). Appellant's claim was premised on the contention that "[t]he foreclosing defendants and purchasing defendants, and each of them, by their acts and omissions, published matters which were untrue and disparaging to LANGE'S right to title[.]" (RA at 664-65 [TAC ¶ 164]). However, Appellant utterly failed to plead facts to support such generalized contention. Appellant did not set forth one specific fact to establish that the notices recorded in connection with the subject foreclosure were fraudulently recorded or contained untrue facts. To the contrary, as set forth herein, the recordation of the subject notices were pursuant to the power of sale contained in the DOT executed by Appellant and California statutory authority.

In addition, the recording of title documents does not establish any falsity or otherwise give rise to a claim for slander of title. In fact, the claim fails as a matter of law because documents recorded with the County Recorder's Office are *privileged publications* pursuant to CCP § 47. The privilege applies to foreclosures conducted pursuant to statutes governing procedures for exercising a power of sale. *Wilton v. Mountain Wood Homeowners Association, Inc.*, 18 Cal. App.4th 565, 569 (1993) (Section 47 privilege applies to homeowners' assessment liens whether or not enforced by a judicial foreclosure or private power of sale).

Furthermore, Civil Code § 2924 provides that "[t]he mailing, publication, and delivery of notices as required, and the performance of the procedures set forth in this article, shall constitute privileged

communications within Section 47." Accordingly, the claim for slander of title fails as a matter of law and the judgment should be affirmed.

XV. THE COURT PROPERLY SUSTAINED THE DEMURRER TO THE TENTH CLAIM FOR "INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS"

The elements of the tort of intentional infliction of emotional distress are: "(1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff's suffering severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the defendant's outrageous conduct." *Christensen v. Superior Court*, (1991) 54 Cal.3d 868, 903 (1991).

A claim for intentional infliction of emotional distress requires a showing of "outrageous" conduct which is "so extreme as to exceed all bounds of that usually tolerated in a civilized community." *Davidson v. City of Westminster*, 32 Cal.3d 197, 209 (1982). A plaintiff must plead and prove with great specificity acts that are "outrageous." Outrageous conduct has been defined as conduct so "extreme as to exceed all bounds of that usually tolerated in a civilized community." *Ricard v. Pacific Indemnity Co.*, 132 Cal.App.3d 886, 894 (1982) (emphasis added). Conduct will be found to be actionable only where the "recitation of the facts to an average member of the community would arouse his resentment against the actor, and leave him to exclaim, 'Outrageous!'" *KORV-TV, Inc. v. Sup. Ct.*, 31 Cal.App.4th 1023, 1028, (1995).

Appellant argues that the use of "robo-signers" and "concealment of the sale" caused "severe emotional distress." *See* AB at 36. Appellant continues to utilize conclusory allegations without factual or legal basis to support her argument.

///

The TAC asserted arguments related to securitization and execution of foreclosure documents. (RA at 665-66 [TAC ¶ 172]). Appellant's contentions fail as a matter of law and demonstrate no facts that would give rise to a claim for intentional infliction of emotional distress as to JPMorgan. *Id.* Appellant reiterates her conclusory contentions regarding the purported predatory lending schemes, to wit, "CHASE has pursued similar activities against hundreds or thousands of California homeowners…". *Id.* Further, as discussed, the foreclosure proceedings were undertaken after the statutorily required notices and procedures were completed. Thus, any alleged conduct by JPMorgan pertaining to the foreclosure proceedings could not be considered "outrageous" and cannot support an action for intentional infliction of emotional distress. Appellant advanced no legal or factual theories in opposition to the demurrer that would demonstrate how she could amend the claim to state sufficient facts. As such, it was not an abuse of discretion to deny leave to amend.

Therefore, the judgment should be affirmed.

XVI. THE DEMURRER TO THE ELEVENTH CLAIM FOR "BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING" WAS PROPERLY SUSTAINED

To establish that Defendant breached an implied covenant of good faith and fair dealing, a plaintiff must plead: (1) that the parties entered into a contract; (2) that plaintiff did all, or substantially all of the significant things that the contract required him/her to do or that he/she was excused from having to do those things; (3) that all conditions required for defendant's performance had occurred; (4) that defendant unfairly interfered with plaintiff's right to receive the benefits of the contract; and (5) that plaintiff was harmed by defendant's conduct. *See*, CACI Jury Instruction No. 325 (2008 ed.) (emphasis added).

The implied covenant of good faith and fair dealing is limited to assuring compliance with the express terms of the contract, liability cannot be extended to create obligations not contemplated by the contract. *See, Racine & Laramie, Ltd. v. Department of Parks & Recreation*, 11 Cal.App.4th 1026, 1034 (1992). Moreover, if the allegations do not go beyond the statement of a mere contract breach and, relying on the same alleged acts, simply seek the same damages or other relief already claimed in a companion contract cause of action, the cause of action for breach of implied covenant of good faith and fair dealing may be disregarded as superfluous as no additional claim is actually stated. *Careau & Co. v. Security Pacific Business Credit*, 222 Cal.App.3d 1371, 1395 (1990).

In this case, Appellant alleges that "all contracts are deemed to include a duty of good faith and fair dealing" and "[b]y such acts and omissions reflected in the above paragraphs, the subject defendants and each of them have breached this duty [.]" (RA at 667 [TAC, ¶ 175]). It is clear from the one paragraph cause of action that this claim is predicated on the prior cause of action for breach of contract. Appellant set forth no additional facts outside of the alleged breach of contract to support this claim. Therefore, the claim fails as a matter of law. Appellant's opposition merely reiterated her contentions regarding breach of contract and failed to establish how any deficiencies could be cured by further amendment. (RA at 1269). As such, the judgment was not in error and the ruling should be affirmed.

XVII. THE DEMURRER TO THE TWELFTH CLAIM FOR "CONSTRUCTIVE TRUST" WAS PROPERLY SUSTAINED

Preliminarily, "Constructive Trust" is not an independent cause of action, but an equitable remedy. *Glue-Fold, Inc. v. Slautterback Corp.*, 82 Cal.App.4th 1018, 1023 (2000) ("[constructive trust] is not an independent cause of action but merely a type of remedy for some categories of

underlying wrong.") For this reason alone, the demurrer was properly sustained without leave to amend.

Even assuming "Constructive Trust" were a cause of action, which JPMorgan does not concede, to create a constructive trust, three conditions are necessary: (1) existence of a res, i.e. property or some interest in property, (2) plaintiff's right to that res and (3) defendant's gain of the res by fraud, accident, mistake, undue influence, violation of the trust or other wrongful act. *Kraus v. Willow Park Public Golf Course*, 73 Cal. App. 3d 354, 373 (1977); *Cramer v. Biddison*, 257 Cal. App. 2d 720, 724 (1968).

Appellant seemingly concedes on this claim as she merely states "The Twelfth cause of action is for constructive trust" in her brief. *See* AB at 37. For this reason alone, the judgment should be affirmed as to this claim.

Without factual allegations supporting the elements to state a valid claim, Appellant is not entitled to a constructive trust against any Defendants and this claim necessarily fails. Accordingly, the order of the Court sustaining the demurrer, without leave to amend, should be affirmed.

XVIII. THE COURT PROPERLY SUSTAINED THE DEMURRER TO THE THIRTEENTH CLAIM FOR "RESPONDEAT SUPERIOR"

Appellant withdrew this claim as an independent cause of action in her opposition to the demurrer, but sought to maintain it as a theory of recover. (RA at 1270). The Court correctly noted that "Plaintiff does not oppose the demurrer to this cause of action." (RA at 1310). Indeed, the claim was withdrawn; yet, Appellant now argues this claim should stand. *See* AB at 37. Appellant cannot now revoke the withdraw that was clearly stated in the opposition, in an effort to somehow legitimize the appeal.

Further, Respondeat Superior, is not by itself, a cause of action. Instead, it is a theory of recovery under various torts and is thus duplicative

and would necessarily have to be encompassed within the theory of liability pertaining to a legitimate cause of action. Under the doctrine of respondeat superior, the innocent principal or employer is liable for the torts of the agent or employee committed while acting within the scope of employment. Civil Code § 2338. Thus, the demurrer was properly sustained as to this cause of action. The Court's ruling and Judgment of Dismissal should be affirmed.

XIX. THE DEMURRER TO THE FOURTEENTH CLAIM FOR "NEGLIGENCE" WAS PROPERLY SUSTAINED

An action for negligence must allege (1) defendant's legal duty of care toward plaintiff; (2) defendant's breach of that duty; (3) injury to plaintiffs as a result of the breach- proximate or legal cause; and (4) damage to plaintiff. *Hoyem v. Manhattan Beach City School District* 22 Cal.3d 508, 514 (1978); *Witkin, California Procedure, Pleadings* § 537, pg. 624 (4th ed. 1997). In this instance, Appellant made no allegations whatsoever to satisfy any element of the claim. (RA at 670-71). The entire cause of action was only one sentence long. This deficiency was apparent and intentional. Appellant's opposition did not address any manner in which she could cure the defects to adequately allege duty, breach or causation. (RA at 1270-71). Appellant sought to incorporate the entirety of the TAC, "by incorporation, it is 189 paragraphs long[,]" by reference, and generalized alleged duties and breaches without any specific reference to paragraphs within the TAC. *Id.* The Court properly sustained the demurrer without leave to amend. (RA at 1310). Appellant provided no basis by which the deficiencies could be cured and required the moving party and court to reference the entirety of the TAC to try to find such support. This was improper and failed to demonstrate any ability to cure.

Further, in the instant appeal, Appellant makes no substantive argument to demonstrate the viability of the claim. Instead, she states that

claim "alleges the above acts were also negligent." *See* AB at 37. Appellant clearly made no effort to maintain this cause of action and fails to demonstrate any error by the Court in sustaining the demurrer without leave to amend. Indeed, Appellant continues to assert a generalized "duty" without any legal authority or factual allegations to support said claim. *Id.* Therefore, The Court's ruling and Judgment of Dismissal should be affirmed.

XX. CONCLUSION

For the foregoing reasons, JPMorgan respectfully requests that this Court affirm the Court's ruling sustaining the Demurrer to the Third Amended Complaint without leave to amend; and the entered Judgment of Dismissal, dated August 1, 2011.

Dated: August 13, 2012

Respectfully submitted,

ALVARADOSMITH
A Professional Corporation

By: _____

JOHN M. SORICH
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Attorneys for Defendant and Respondent, JPMorgan Chase Bank, N.A., as the acquirer of certain assets and liabilities of Washington Mutual Bank from the FDIC acting as Receiver

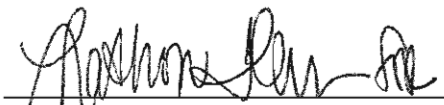
CERTIFICATE OF COMPLIANCE

Counsel of record hereby certifies that pursuant to Rule 8.204(c)(1) or 8.360(b)(1) of the California Rules of Court, the enclosed brief of JPMorgan is produced using 13-point Roman type, including footnotes and contains approximately 13,010 words, which is less than the total words permitted by the Rules of Court. Counsel relies on the word count of the computer program used to prepare this brief.

Dated: August 13, 2012

Respectfully submitted,

ALVARADOSMITH
A Professional Corporation

By: 

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

Lange v. Chase, et al.
Ventura Superior Court 56-2010-00378356-CU-OR-VTA
Court of Appeal Case No.: B233670

I am employed in the County of Orange, State of California. I am over the age of 18 years and not a party to the within action. My business address is **ALVARADOSMITH, 1 MacArthur Place, Santa Ana, CA 92707**.

On August 13, 2012, I served the foregoing document described as **RESPONDENT JPMORGAN CHASE BANK, N.A.'S OPENING BRIEF** on the interested parties in this action.

☒ by placing the original and/or a true copy thereof enclosed in (a) sealed envelope(s), addressed as follows:

SEE ATTACHED SERVICE LIST

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Executed on August 13, 2012, at Santa Ana, California.

Heather N. Kane

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Lange v. Chase, et al.
Ventura Superior Court 56-2010-00378356-CU-OR-VTA
Court of Appeal Case No.: B233670

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TO BE FILED IN THE COURT OF APPEAL

APP-008

COURT OF APPEAL, SECOND APPELLATE DISTRICT, DIVISION 6	Court of Appeal Case Number: B233670
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): S. Christopher Yoo (SBN 169442) AlvaradoSmith, A Professional Corporation 1 MacArthur Place, Suite 200 Santa Ana, California 92707 TELEPHONE NO.: (714) 852-6800 FAX NO. (Optional): E-MAIL ADDRESS (Optional): cyoo@alvaradosmith.com ATTORNEY FOR (Name): Respondent, JPMorgan Chase Bank, N.A.	Superior Court Case Number: 56-2010-00378356-CU-OR-VTA
APPELLANT/PETITIONER: Susan Lange RESPONDENT/REAL PARTY IN INTEREST: JPMorgan Chase Bank, N.A.	FOR COURT USE ONLY CLERK'S OFFICE COURT OF APPEAL-SECOND DIST. RECEIVED FEB 22 2012 JOSEPH A. LANE Clerk

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

(Check one): ☑ INITIAL CERTIFICATE ☐ SUPPLEMENTAL CERTIFICATE

Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.

1. This form is being submitted on behalf of the following party (*name*): JPMorgan Chase Bank, N.A.

2. a. ☐ There are no interested entities or persons that must be listed in this certificate under rule 8.208.

   b. ☑ Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Nature of interest (Explain):
(1) JPMorgan Chase & Co.	JPMorgan Chase Bank, N.A., an acquirer of certain assets & liabilities of Washington Mutual Bank from the FDIC, acting as receiver, is a wholly owned subsidiary of JPMorgan Chase & Co., a publicly traded corporation. No publicly held corporation owns 10% or more of JPMorgan Chase & Co.
(2) JPMorgan Chase Bank, N.A.	
(3)	
(4)	
(5)	

☐ Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: February 16, 2012

S. Christopher Yoo
(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

R2/22

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FOR COURT USE ONLY

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Case Name: Susan Lange v. JPMorgan Chase Bank, N.A.

Court of Appeal Case Number: B233670

Superior Court Case Number: 56-2010-00378356-CU-OR-VTA

1. At the time of service I was at least 18 years of age and **not a party to this legal action.**

2. My ☐ residence ☑ business address is *(specify):*
   1 MacArthur Pl., Suite 200, Santa Ana, CA 92707

3. I mailed or personally delivered a copy of the following document as indicated below *(fill in the name of the document you mailed or delivered and complete either a or b):* Certificate of Interested Entities or Persons

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      (1) I enclosed a copy of the document identified above in an envelope or envelopes **and**

         (a) ☐ **deposited** the sealed envelope(s) with the U.S. Postal Service, with the postage fully prepaid.

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         (a) Person served:
            (i) Name: Roger S. Senders, Esq.
            (ii) Address:
            The Law Offices of Roger A. Senders
            4264 Overland Ave., Culver City, CA 90230

         (b) Person served:
            (i) Name: Doughlas Gillies, Esq.
            (ii) Address:
            3756 Torino Dr.
            Santa Barbara, CA 93105

         (c) Person served:
            (i) Name: Randall A. Cohen, Esq.
            (ii) Address:
            Silver & Arsht
            1860 Bridgegate St., Suite 100, Westlake Village, CA 91361-1409

         ☐ Additional persons served are listed on the attached page *(write "APP-009, Item 3a" at the top of the page).*

      (4) I am a resident of or employed in the county where the mailing occurred. The document was mailed from *(city and state):*

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      (c) Date delivered:
      (d) Time delivered:

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

Date: 2/21/12

Heather N. Kane
(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)

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