IN THE COURT OF APPEAL OF THE STATE CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION SIX

SUSAN LANGE,

Plaintiff and Appellant,

v.

JP MORGAN CHASE BANK, N.A., a New York Corporation; WASHINGTON MUTUAL, INC., a Delaware Corporation; WASHINGTON MUTUAL BANK, F.A., a Washington Corporation; WASHINGTON MUTUAL ASSET ACCEPTANCE CORP., a Washington Corporation; WASHINGTON MUTUAL MORTGAGE SECURITIES CORP., a Washington Corporation; ALTA COMMUNITY INVESTMENT INC., a California Corporation; WASHINGTON MUTUAL CAPITAL CORP., a corporation of unknown locale; ALTA COMMUNITY INVESTMENT III, LLC, A California Limited Liability Company; SEASIDE CAPITAL FUND I, LP, A California Limited Partnership; and DOES 1-250, inclusive,

Defendants and Respondents.

Case No. B233670

Ventura County Superior Court

Case No. 56-2010-00378356

APPEAL FROM JUDGMENT OF DISMISSAL FOLLOWING DEMURRERS TO THIRD AMENDED COMPLAINT

Hon. Mark S. Borrell, Judge

APPELLANT'S REPLY BRIEF

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SUSAN LANGE, Plaintiff and Appellant, v. JP MORGAN CHASE BANK, N.A., a New York Corporation; WASHINGTON MUTUAL, INC., a Delaware Corporation; WASHINGTON MUTUAL BANK, F.A., a Washington Corporation; WASHINGTON MUTUAL ASSET ACCEPTANCE CORP., a Washington Corporation; WASHINGTON MUTUAL MORTGAGE SECURITIES CORP., a Washington Corporation; ALTA COMMUNITY INVESTMENT INC., a California Corporation; WASHINGTON MUTUAL CAPITAL CORP., a corporation of unknown locale; ALTA COMMUNITY INVESTMENT III, LLC, A California Limited Liability Company; SEASIDE CAPITAL FUND I, LP, A California Limited Partnership; and DOES 1-250, inclusive, Defendants and Respondents.	**Case No. B233670** Ventura County Superior Court Case No. 56-2010-00378356

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

`

OTHER AUTHORITIES

I. OVERVIEW

This case reviews dismissals following demurrers to the Third Amended Complaint ("TAC") without leave to amend. Judge Borrell ruled that Susan Lange's complaint did not state facts sufficient to state a cause of action (Tentative Ruling, CT 1220-1222; Minute Order, CT 1306-1310). The Court of Appeals must determine whether she has alleged sufficient facts.

If the complaint states a cause of action under any theory, regardless of the title under which the factual basis for relief is stated, that aspect of the complaint is good against a demurrer. The court is not limited to plaintiff's theory of recovery in testing the sufficiency of the complaint, but instead must determine if the factual allegations of the complaint are adequate to state a cause of action under any legal theory. California courts have long since departed from holding a plaintiff strictly to the "form of action" she has pleaded and instead have adopted the flexible approach of examining the facts alleged to determine if a demurrer should be sustained. *Bagatti v. Department of Rehabilitation* (2002) 97 Cal.App.4th 344, 353.

During the past five years, Chase has succeeded in defeating virtually every wrongful foreclosure case on the pleadings, and Chase is defending more than 10,000 legal proceedings, according to the bank's 10-K filing with the Securities and Exchange Commission dated February 28, 2011. Chase's fortress remains largely intact, but there are indications in Respondent's Brief that the stonewall is beginning to crack. Trumpeting its arguments with emphatic phrases like *entirely disingenuous* (p. 23) and *blatant misrepresentation* (p. 27), one might wonder if perhaps Chase "doth protest too much." (Shakespeare, "Hamlet," Act III, scene II).

A recent District Court opinion, *Mena v. JP Morgan Chase Bank* (N.D.Cal. Sept. 7, 2012, No. 12-1257) raised questions about assertions of fact made by Chase in every foreclosure case that the courts have almost universally accepted to be true in sustaining thousands of demurrers and granting countless motions to dismiss:

> But neither may the court rely on Defendants' assertions of this chain of title, which appears to be a factual matter that Plaintiffs dispute. And although the court notices the September 2008 Purchase and Assumption Agreement between Chase and the FDIC Receiver of WaMu's assets, the court may not notice, as undisputed fact, that the effect of this agreement was to transfer to Chase the beneficial interest in question, that interest already having been "spun off" according to the Complaint. It is not clear from the Complaint or the noticed documents whether Chase properly owned the beneficial interest that it purported to transfer in the first and second Assignment of DOT. The allegations of false signatures to which Defendants have not responded further strengthen Plaintiffs' allegation of wrongful conduct. Plaintiffs have stated a facially plausible claim that the nonjudicial foreclosure process was not founded on a valid, beneficial interest.

If Chase was not the holder or beneficiary of the Promissory Note, if Chase cannot produce the Promissory Note, if Chase cannot identify the owner or holder of the Note, and if Chase is not the servicer of the Note, as alleged in the Third Amended Complaint (TAC ¶¶ 90-91, CT 642), then the trustee's sale was not founded on a valid, beneficial interest. Nothing was transferred to Alta and Seaside at the trustee's sale on July 14, 2010. They had nothing to sell to a third-party purchaser, and the emotional distress caused by sending a sheriff to evict Susan Lange on July 29, 2011, was extreme and outrageous.

Plaintiff's allegation that the foreclosing bank did not own the loan at the time of issuing the notice of default was sufficient to state a claim for wrongful foreclosure. *Tamburri v. Suntrust Mortg., Inc.*, (N.D.Cal. Dec. 15,

2011, No. C-11-2899) 2011 U.S. Dist. LEXIS 144442, 2011 WL 6294472 at *10-14.

No matter how carefully an imposter dots his i's and crosses his t's, he cannot lawfully sell a California residence at a trustee's sale. If he collects money from the owner under threat of foreclosure, he is a robber. If he takes money from a purchaser who is fully aware of the conflict, or even to an unsuspecting stranger, he is a thief. Title will not rest quietly, and it can never be insured. The trust deed can only be foreclosed by the owner of the note. *Santens v. Los Angeles Finance Co.* (1949) 91 Cal.App.2d 197, 202.

On the other hand, if Chase was the Lender, Beneficiary, or authorized agent when it entered into a Trial Plan Agreement with Lange in September 2009 in the name of WaMu (Exhibit 2, CT 680) one year after WaMu was seized by the FDIC, and if Chase did not reevaluate Lange's application for assistance in good faith to determine whether Chase would offer a permanent workout solution," then Chase violated its covenant of good faith and fair dealing with Lange, whose detrimental reliance added up to 9 x $6,384 = $57,456—plus the cost of repairing and improving the property and the loss of her home.

If Chase was not the Lender, Beneficiary, or authorized agent when it accepted Lange's money and sold her house to Alta and Seaside, even as it refused to furnish any documents to support its claim, that is a crime.

II. WRONGFUL FORECLOSURE

A. Alta and Seaside Raise a Moot Point about Expungement of Lis Pendens

Alta and Seaside argue that this appeal is moot, citing *Vegas Diamond Properties, LLC v. FDIC* (9th Cir. 2012) 669 F.3d 933. In that federal

action, Vegas Diamond and Johnson Investments had filed an Emergency Ex Parte Application for Temporary Restraining Order and Motion for Preliminary Injunction in Nevada state court seeking to enjoin La Jolla Bank and Action Foreclosure Services, Inc., from proceeding with a Trustee's sale. The FDIC, as receiver for the original lender, La Jolla Bank, successfully moved to dissolve a Temporary Restraining Order that prevented it from conducting a trustee's sale on the basis that injunctive relief was not allowed under 12 U.S.C. § 1821(j). Plaintiffs' properties were then sold by the FDIC at a trustee's sale. *Id* at p. 935-936. The Ninth Circuit dismissed Plaintiffs' appeal as moot because the properties had been sold.

There was no dispute in that case that La Jolla Bank was the Lender, or that the FDIC, as the bank's receiver, was authorized to initiate the sale. One of the purchasers at the sale was a bona fide purchaser, not an insider who structured the loan for La Jolla Bank, such as the defendant who got away in this case, Todd Kaufman. The other purchaser was the FDIC, the receiver.

The court held that an appeal is moot if no present controversy exists as to which an appellate court can grant effective relief. In rejecting the argument that the case was exempt, the court wrote, "We are unpersuaded that this case meets the requirements of the 'capable of repetition, yet evading review' exception to the general principles of mootness…(S)ince Vegas Diamond and Johnson Investments are allowed to bring damages actions for the alleged unlawful conduct associated with the foreclosures, this conduct does not "evade review." *Vegas Diamond*, *supra*, 669 F.3d at 937.

In Lange's case, the original Complaint to Set Aside Trustee's Sale and a Notice of Lis Pendens were filed by Susan Lange's attorney, Julie Gaviria, on August 2, 2010 (CT 69-70). The named defendants were Chase, WaMu,

Alta, and Seaside (CT 1). A lis pendens was recorded on the same day in the Ventura County Recorder's Office. The property had already been sold on July 14, 2010, to Alta and Seaside at a trustee's sale. The sale was conducted without Lange's knowledge 19 days before the Complaint and lis pendens were filed. After the TAC was dismissed, Judge Borrell's Order Expunging Notice of Pending Action was filed on July 21, 2011 (CT 1320-1321). The lis pendens had not been filed when the trustee's sale took place, so expungement of the lis pendens did not retroactively authenticate the trustee's sale.

The TAC alleged that Alta and Seaside were insiders, not bona fide purchasers (TAC, ¶¶ 13-18; 27-28). Chase was not the Lender or servicer (¶¶ 32-33). Alta and Seaside argue that expungement of the lis pendens on July 21, 2011, renders plaintiff's first twelve causes of action moot under Cal. Code Civ. Proc. §405.61. That section articulates an exception: "a nonfictitious party to the action at the time of recording of the notice of withdrawal or order." Such a person "shall be deemed to have actual knowledge of the action or any of the matters contained, claimed, or alleged therein, or any of the matters related to the action…"

Alta and Seaside cite *Mix v. Superior Court* (2004) 124 Cal.App.4th 987. "The Legislature has provided that upon recordation of the order expunging a lis pendens, persons not party to the litigation are deemed not to have notice of the real property claim, "irrespective of whether that person possessed actual knowledge of the action or matter and irrespective of whether or how the knowledge was obtained. (§405.61)." *Mix v. Superior Court* (2004) 124 Cal.App.4th 987, 994.

In referring to a bona fide purchaser when citing *Mix*, Alta and Seaside might be alluding to a purchaser other than the parties to this action. The damages caused to Plaintiff in the taking of her property in the illegal

foreclosure sale on July 14, 2010, are not diminished by any action taken by Alta and Seaside after this appeal was filed.

Mix held that a trial court confronted with an expungement motion after judgment against the claimant may deny the motion only if the court believes that its own decision will be reversed on appeal. 124 Cal.App.4th at p. 996. That sets a high bar. *Mix* was followed by *Amalgamated Bank v. Superior Court* (2007) 149 Cal.App.4th 1003, which noted that the 1992 revision to Code Civ. Proc. §405.32 failed to articulate a standard for ruling on a motion to expunge a lis pendens made after judgment against the claimant. *Amalgamated* found, "Where an unsuccessful real property claimant appeals a judgment of the trial court and petitions for interim mandamus relief from an expungement order in the appellate court, we will conduct prima facie review of the probable success of the underlying appeal." *Id*. at 1017.

Alta and Seaside seem to be taking the position that if some crook takes title to, say, Joe's house by recording a notice substituting himself as the beneficiary and then staging a fraudulent trustee's sale, and if Joe sues and files a lis pendens, and the crook manages to get the lis pendens expunged, then he quickly sells the house to his cousin, Joe has to pack up his family and move out because that cousin now owns the Joe's house free and clear and the claims in Joe's lawsuit are moot? That cannot be the law.

B. The Trustee's Sale was Illegal Under Civil Code §2924f for Failure to Post Notice 20 Days Before the Sale

A principle issue raised in the pleadings and the Opening Brief is whether the trustee's sale on July 14, 2010, was illegal. The Notice of Trustee's Sale was recorded on June 26, 2009. It announced a sale on July 14, 2009 – only 18 days later (See Exhibit 4, Chase's Demurrer to TAC, CT

1067). The Notice of Trustee's Sale was not recorded, published, and posted at least 20 days before the date of the sale, so the NOTS was insufficient under Cal. Civ. Code §2924f (b)(1).

Cal. Civ. Code §2924f (b)(1):

> Except as provided in subdivision (c), before any sale of property can be made under the power of sale contained in any deed of trust or mortgage…notice of the sale thereof shall be given by posting a written notice of the time of sale and of the street address and the specific place at the street address where the sale will be held, and describing the property to be sold, at least 20 days before the date of sale…and publishing a copy once a week for three consecutive calendar weeks, the first publication to be at least 20 days before the date of sale…(emphasis added).

Defendants/Appellants have not alleged facts showing that notice of the sale was given at least 20 days before the date of the trustee's sale.

C. The Trustee's Sale was Illegal Under Civil Code §2924g for Failure to Provide Notice at the Previous Scheduled Sale

The TAC alleges that after negotiations to avoid foreclosure concluded with the TPA, with no further contact to Lange or her attorney to avoid foreclosure, Chase ambushed Susan Lange by holding a Trustee's Sale. On July 15, 2010, Lange came home to find a 3-day Notice to Quit on her door. Her attorney, Julie Gaviria, "contacted Chase, who informed her that on July 6, 2010, and July 8, 2010, someone from Chase had telephoned Lange and received a 'disconnected or no longer in service' message. Chase's computer notes stated that Chase sold Running Ridge at a Trustee's Sale on July 14, 2010 with at most, six days notice to the public (July 8—July 14). No notice was given to Lange or Gaviria, which prevented Lange from appearing at the trustee's sale to oversee the process and, at her option, to bid on the property. Lange believes that had she known of the sale, she would have had the capacity to obtain financing to bid. No notice of the

sale was made in any newspaper. No posting was placed at the location of the sale." (TAC ¶61, CT 633-634)

Cal. Civ. Code §2924g states, in part:

> (c) (1) There may be a postponement or postponements of the sale proceedings, including a postponement upon instruction by the beneficiary to the trustee that the sale proceedings be postponed, at any time prior to the completion of the sale for any period of time not to exceed a total of 365 days from the date set forth in the notice of sale. The trustee shall postpone the sale in accordance with any of the following:
>
> (A) Upon the order of any court of competent jurisdiction.
>
> (B) If stayed by operation of law.
>
> (C) By mutual agreement, whether oral or in writing, of any trustor and any beneficiary or any mortgagor and any mortgagee.
>
> (D) At the discretion of the trustee.
>
> (2) In the event that the sale proceedings are postponed for a period or periods totaling more than 365 days, the scheduling of any further sale proceedings shall be preceded by giving a new notice of sale in the manner prescribed in Section 2924f. …
>
> (d) The notice of each postponement and the reason therefor shall be given by public declaration by the trustee at the time and place last appointed for sale. *A public declaration of postponement shall also set forth the new date, time, and place of sale* and the place of sale shall be the same place as originally fixed by the trustee for the sale. No other notice of postponement need be given. However, the sale shall be conducted no sooner than on the seventh day after the earlier of (1) dismissal of the action or (2) expiration or termination of the injunction, restraining order, or stay that required postponement of the sale, whether by entry of an order by a court of competent jurisdiction, operation of law, or otherwise, unless the injunction, restraining order, or subsequent order expressly directs the conduct of the sale within that seven-day period. For purposes of this subdivision, the seven-day period shall not include the day on which the action is dismissed, or the day on which the injunction, restraining order, or stay expires or is terminated…(emphasis added).

Chase has not alleged that a public declaration was made by the trustee at the time and place last appointed for sale to announce the new date, time, and place for the sale. Did the trustee foresee at the time the sale was postponed in September 2009 that the sale would be scheduled for July 14, 2010, to be held "with at most, six days notice to the public and no notice to the homeowner" as alleged in the TAC ¶ 61 (CT 633-634)?

Mabry v. Superior Court of Orange County (2010) 185 Cal.App.4th 208, held that Cal. Civ. Code §2923.5 was not preempted by federal law because the statute was part of the foreclosure process, traditionally a matter of state law. Regulations promulgated by the Office of Thrift Supervision pursuant to the Home Owners' Loan Act of 1933 (12 U.S.C. § 1461 et seq.) preempted state law but dealt with loan servicing only. (Mabry, supra, 185 Cal.App.4th at pp. 228-231.) "Given the traditional state control over mortgage foreclosure laws, it is logical to conclude that if the Office of Thrift Supervision wanted to include foreclosure as within the preempted category of loan servicing, it would have been explicit." (Id. at p. 231).

Based on *Mabry*, the Fourth District ruled that Civil Code §2924g(d), like §2923.5, is part of the process of foreclosure and therefore is not subject to federal preemption. *Ragland v. U.S. Bank* (4th Dist., Sept. 11, 2012, No. G045580)). *Ragland* found that §2924g(d) creates a private right of action and is not preempted by federal law.

> The purpose of the seven-day waiting period under section 2924g(d) was not, however, to permit reinstatement of the loan, "but to 'provide sufficient time for a trustor to find out when a foreclosure sale is going to occur following the expiration of a court order which required the sale's postponement' and 'provide the trustor with the opportunity to attend the sale and to ensure that his or her interests are protected.' [Citation]." (*Hicks v. E.T. Legg & Associates* (2001) 89 Cal.App.4th 496, 505.) "The bill [amending section 2924g(d) to add the waiting period] was sponsored by the

> Western Center on Law and Poverty in response to an incident in which a foreclosure sale was held one day after a TRO was dissolved. The property was sold substantially below fair market value. The trustor, who had obtained a purchaser for the property, did not learn of the new sale date and was unable to protect his interests at the sale." (Ibid.) Thus, in obtaining relief under section 2924g(d), the issue is not whether Ragland could have reinstated her loan within the seven-day waiting period but whether the failure of Downey Savings to comply with the statute impaired her ability to protect her interests at a foreclosure sale. Defendants did not raise that issue as ground for summary adjudication of the fourth cause of action. Since there is no administrative mechanism to enforce section 2924g(d), a private remedy is necessary to make it effective. *Ragland v. U.S. Bank*, *id* at pp. 4-5.

Chase's failure to provide statutory notice of the sale, and its unjustified and unconscionable concealment of the trustee's sale from Lange, denied her the opportunity to attend the sale and to ensure that her interests were protected.

III. TENDER IS NOT REQUIRED UNDER MANY CIRCUMSTANCES IN ADDITION TO A VOID SALE

A tender may not be required where it would be inequitable to do so. When the person making the claim has a counter-claim or set-off against the beneficiary, it is deemed that they offset each other, and if the offset is equal to or greater than the amount due, a tender is not required. Also, if the action attacks the validity of the underlying debt, a tender is not required since it would constitute an affirmative of the debt." *Onofrio v. Rice* (1997) 55 Cal.App.4th 413, 424 (citing 4 Miller & Starr, Cal. Real Estate, Deeds of Trust & Mortgages § 9:154, at pp. 508-512). Lange's claim for damages can far exceed the sum Chase received when it sold her house to Alta and Seaside, and her action attacks the validity of the underlying debt. A tender would constitute an affirmative of the debt.

The TAC alleges in ¶53-54 that the entity claiming to be the trustee and attempting to sell Lange's home was not legally substituted as Trustee. If a trustee's sale is void, no tender is necessary for it to be set aside. It is "a complete nullity with no force or effect as opposed to one which may be set aside but only through the intervention of equity." *Dimock v. Emerald Industries* (2000) 81 Cal.App.4th 868, 876. Judge Borrell cited *Dimock* in support of his decision to deny plaintiff's request to add Alta and Seaside to the first and second causes of action, stating that the debtor must tender any amounts due to overcome a voidable sale. (Tentative Ruling 5/12/2011, CT 1220). If the sale was void, *Dimock* states that tender is not necessary. If the sale was illegal, as alleged, then the damages that Lange is likely to recover will far exceed any amount that she might be expected to tender related to the value of the property. The court's tentative ruling did not address the allegation raised eleven times in the TAC that the sale was *void*.

A Notice of Default dated March 14, 2009, was recorded on March 18, 2009, and rescinded on March 25. A second Notice of Default dated March 18, 2009, was recorded on March 20. (TAC ¶¶50-53, CT 630-631). The Substitution of Trustee described in Chase's brief at page 4 is dated March 18, 2009, but it was executed before a notary public on March 26, 2009, and it was not recorded until May 4 (TAC ¶53, CT 631). The Acknowledgment on the Substitution of Trustee (CT 123-124) states that Christine Anderson, Attorney in Fact, for JP Morgan Chase Bank, appeared before a Notary in Minnesota on March 26, 2009. Since the Substitution was not signed by the Christine Anderson, a known robosigner employed by Lender Processing Services, until six days after the Notice of Default was recorded, the NOD was ineffective.

After commenting on "baseless contentions" on page 12, Chase attributes to the Court a ruling that a substitution of trustee "is not

ineffective simply because it was recorded later than the notice of default." Until a substitution of trustee is signed by an authorized person, such as the beneficiary, the substitute trustee cannot assume any authority. It is not authorized to execute and record a Notice of Default. It cannot execute a Notice of Sale. If they could do it, anyone could do it. Time travel dwells in the realm of science fiction, beyond the reach of the long arm of the law.

The TAC alleges that Chase employed robosigners, such as Christine Anderson, to execute the foreclosure documents:

> LANGE is informed and believes that the NODs were signed by a "robosigner" who had no idea what was being signed or the circumstances of her particular case and accordingly rendering each document illegal and void on its face (TAC ¶55, CT 632:17-20).
>
> LANGE is informed and believes and thereon alleges that KAUFMAN knew that the foreclosure documents (NOD, etc.) were signed by a robosigner and were therefore illegal. LANGE is informed and believes and thereon alleges that, knowing the above and also knowing that proper notice of the trustee's sale on Running Ridge was not given, KAUFMAN and MCCARTHY, owners and operators of ALTA III and SEASIDE knew that they could not legally buy Running Ridge at the trustee's sale there on (TAC ¶109, CT 647:19-25).
>
> It is extreme and outrageous that CHASE knowingly and intentionally used a robosigner to effect the foreclosure on Running Ridge including declarations that CHASE had followed the law, when the robosigner in fact had no knowledge of what was being signed or what CHASE and its agents had done in relation to LANGE and Running Ridge (TAC ¶172, CT 666:4-9).

The Substitution of Trustee describes JPMorgan Chase Bank as the beneficiary under the DOT, but no other document identifies CHASE as a beneficiary or as holding any other interest in the Note. A Substitution of Trustee cannot be self-authenticating. Chase cannot legally substitute itself in to assume the role of beneficiary.

Chase misquotes Cal. Civ. Code §2934a(b) on page 15 of its brief, where it states:

> "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."

The actual language of Civ. Code §2934a(b) reads:

> (b) If the substitution is executed, but not recorded, prior to or concurrently with the recording of the notice of default, the beneficiary or beneficiaries or their authorized agents shall cause notice of the substitution to be mailed prior to or concurrently with the recording thereof, in the manner provided in Section 2924b, 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.

On the DOT, Susan Lange is named as the Trustor and WaMu is the lender and beneficiary. The TAC alleges, "No assignment of the Note or DOT has been recorded giving CHASE any interest in the Property nor was a document recorded making CHASE the beneficiary of the DOT. Accordingly, since Chase had no capacity to make them, all actions taken by CHASE in regard to the Property were void on their face. Even if such a transfer had taken place or been recorded, CHASE could not have taken that which WAMU did not possess, status as the holder in due course which it had already sold. (TAC ¶ 41, CT 630).

Tamburri v. Suntrust Mortg., Inc. (N.D.Cal. 2011, No. C-11-2899)

2011 U.S. Dist. LEXIS 144442, 2011 WL 6294472, at *4-5, describes many exceptions and qualifications that caution against a blanket requirement of the tender rule at the pleading stage based on a review of state and federal case law. "These exceptions and qualifications counsel against a blanket requirement of the tender rule at the pleading stage. The Court thus declines to dismiss the complaint on the basis of her failure to allege tender."

In *Ogilvie v. Select Portfolio Serv.* (N.D.Cal. July 23, 2012, No. 12-1654), the District Court followed *Tamburri*:

> The tender element of wrongful foreclosure is an equitable concept. The Court declines to apply the tender rule at this early pleading stage without an opportunity to undertake a more informed analysis of the equities, and where the claim is dismissed on other grounds with leave to amend. See *Tamburri v. Suntrust Mortg., Inc.,* (N.D. Cal. 2011).

ING Bank v. Ahn (N.D. Cal. July 13, 2009, No. C 09-00995) 2009 WL 2083965, at *2 noted that *Yamamoto v. Bank of New York* (9th Cir.2003) 329 F.3d 1167 "did not hold that a district court must, as a matter of law, dismiss a case if the ability to tender is not pleaded".

Singh v. Wash. Mut. Bank, (N.D. Cal. 2009, No. C 09-02771) 2009 WL 2588885, at *3 collected cases indicating that Yamamoto did "not hold that a claim for rescission must, in all instances, be conditioned on a tender offer by the plaintiff."

Botelho v. US Bank, NA (N.D.Cal. 2010) 692 F.Supp. 2d 1174, 1180, summarized the diverse interpretations of the tender requirement:

> The concluding language of Yamamoto strongly suggests that district courts lack the discretion, at the pleading stage, to require TILA plaintiffs to allege the present ability to tender 329 F.3d 1167, 1173, implying that district courts should base their decision as to when a plaintiff must show ability to tender on the particular "circumstances" and "evidence" of each case. This reading of

> Yamamoto is also consistent with the liberal pleading standards of Federal Rule of Civil Procedure 8, which require only that the averments of the complaint sufficiently establish a basis for judgment against the defendant. *Allied Signal, Inc. v. City of Phoenix*, 182 F.3d 692, 696 (9th Cir.1999). *Id* at 1181. Finally, and most fundamentally, this is the most workable practice. It is hard to see how a judge could decide on the bare pleadings whether to require a given plaintiff to allege an extra element of a claim in order to proceed any further with his or her suit. The enumerated elements of any given claim are among the most fixed of legal principles; a particular fact either must be pleaded every time in order to state a claim, or it need not be pleaded at all. The list of elements cannot be altered on a case-by-case basis.

The court concluded that Botelho's complaint was not deficient for failure to plead ability to tender loan proceeds.

Judge Borrell stated that the debtor must tender any amounts due to overcome a voidable sale. (Tentative Ruling 5/12/2011, CT 1220). He did not address Plaintiff's argument and allegations that the sale was void, and therefore tender was not required.

IV. RESPA AND TILA VIOLATIONS DESCRIBED IN THE FOURTH CAUSE OF ACTION INCLUDE ALLEGATIONS OF FACT THAT SUPPORT LANGE'S CLAIM FOR PROMISSORY ESTOPPEL AND FRAUD

Chase correctly notes that Appellant's Opposition to Chase's Demurrer to the TAC stated, "Ms. Lange dismisses Chase in regard to this (Fourth) cause of action without prejudice," Chase now argues at page 23 of its brief, "It is entirely disingenuous that Appellant is now seeking to reignite this claim against JPMorgan" for RESPA and TILA violations.

Chase has a point, and well said, taking us back to the opening lines of David Hume's *Enquiry Concerning the Principles of Morals* (1777):

> Disputes with men, pertinaciously obstinate in their principles, are, of all others, the most irksome; except, perhaps, those with persons, *entirely disingenuous*, who really do not believe the opinions they defend, but engage in the controversy, from affectation, from a spirit of opposition, or from a desire of showing wit and ingenuity, superior to the rest of mankind.
>
> The same blind adherence to their own arguments is to be expected in both; the same contempt of their antagonists; and the same passionate vehemence, in inforcing sophistry and falsehood. And as reasoning is not the source, whence either disputant derives his tenets; it is in vain to expect, that any logic, which speaks not to the affections, will ever engage him to embrace sounder principles. David Hume, Esq., *An Enquiry Concerning the Principles of Morals*, (1777) p. 1. (http://www.davidhume.org/texts/epm.html).

However, Chase's disturbing inability to document its claim to Running Ridge, revealed in its feeble response to Lange's written request, raises a serious question of fact in the pleadings as to whether or not Chase was withholding information to prevent Plaintiff/Appellant from ascertaining the identity of the owner or beneficiary of the Note, and to conceal whether her nine monthly payments of $6,384 were converted by Chase, constituting unjust enrichment, rather than paid to the beneficiary (TAC ¶115, CT 649:8-14).[1] Plaintiff's dismissal of the Fourth Cause of Action *without prejudice* leaves the door ajar for the reviewing court to cite an additional allegation of material fact in the TAC to support the contention that Chase is not the Lender, Beneficiary, or authorized agent.

When a trial court sustains a demurrer without leave to amend, the appellate court must determine whether or not the plaintiff could amend the complaint to state a cause of action. *Cantu v. Resolution Trust Corp.* (1992) 4 Cal.App.4th 857, 879 .

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[1] Although the TAC indicates in ¶112 that the TPA payments were $6,383 per month (CT 490), the TPA specifies monthly payments of $6,384 (CT 680).

Under de novo review, "we examine the complaint's factual allegations to determine whether they state a cause of action on any available legal theory. We treat the demurrer as admitting all material facts which were properly pleaded. However, we will not assume the truth of contentions, deductions, or conclusions of fact or law, and we may disregard any allegations that are contrary to the law or to a fact of which judicial notice may be taken." *Ellenberger v. Espinosa* (1994) 30 Cal.App.4th 943, 947 .

Chase's disturbingly meager response to Lange's request for all documents relating to the mortgage on December 15, 2010, alleged in paragraphs 112-114 of the TAC (CT 648-649), is a fact alleged in the TAC that supports her contentions that Chase has concealed the identity of the owner and beneficiary of the mortgage and cannot identify them. In reviewing a demurrer, the court accepts as true all of the complaint's allegations of material facts. *A1 Holding Co. v. O'Brien & Hicks, Inc.* (1999) 75 Cal.App.4th 1310, 1312. If it appears the plaintiff is entitled to any relief, the complaint will be held good. *Chase Chemical Co. v. Hartford Acc. & Indemn.* (1984) 159 Cal.App.3d 229, 242.

In *M. G. Chamberlain & Co. v. Simpson* (1959) 173 Cal.App.2d 263, 343 P.2d 438, the court reversed a judgment on demurrer to the third amended complaint: "The complaint is prolix and discursive. It abounds in evidence, conclusions of fact, conclusions of law, argument, and immaterial matter. The rule that the complaint must contain a statement of the facts in ordinary and concise language is completely ignored. ...Nevertheless, if, intermingled with such matters, there are averments of ultimate facts sufficient to constitute a cause of action, it was error to sustain the demurrer without leave." (173 C.A.2d 267.)

Chase's inexplicable refusal to disclose information that it is required to disclose under RESPA tends to show that Chase may not be the Lender

or Beneficiary and that it converted the payments from Lange. If someone is falsely accused of shoplifting, (s)he shows the accuser her receipt. Chase responds with lawyers who charge the accuser with being disingenuous.

V. PROMISSORY ESTOPPEL IS A VIABLE ALTERNATIVE THEORY FOR THE CAUSES OF ACTION FOR BREACH OF CONTRACT AND FRAUD

Plaintiff's Fifth Cause of Action for Breach of Contract could have been labeled Promissory Estoppel. The complaint alleges all of the necessary elements: (1) a promise clear and unambiguous in its terms; (2) reliance by the party to whom the promise is made; (3) the reliance is both reasonable and foreseeable; and (4) the party asserting the estoppel is injured by his reliance. *Advanced Choices, Inc. v. State Dept. of Health Services* (2010) 182 Cal.App.4th 1661, 1672.

Lange's TAC alleges that WaMu and Lange entered into a binding contract, the TPA, on September 25, 2009. The TPA called for Lange to pay WaMu $6,383 per month, which she paid timely and faithfully each month for ten months following the execution of the TPA. WaMu agreed to suspend the foreclosure and notice of trustee's sale it had placed against Running Ridge as long as Lange continued to make the payments.

> ¶118. …WAMU agreed to review modification with LANGE which by statute required contact between WAMU and Gaviria. No contact was had other than when WAMU repeatedly lost track of the financial data LANGE had provided… (CT 650:5-9).

> ¶119. …In reliance on WAMU'S suspension of the foreclosure and trustee's sale, LANGE spent thousands of dollars more performing maintenance and updating Running Ridge which she would not have spent had she not entered into the TPA with WAMU (CT 650:20-24).

> ¶142. Chase entered into the TPA with Lange telling her that Chase would act in good faith toward modifying her purported loan with Chase. Chase knew that its statements were not true. Chase intended to keep the money Lange paid pursuant to the TPA and never intended to grant or even consider Lange for a modified loan. Lange relied on Chase's misrepresentation to her detriment, investing a significant amount of money in the repair and maintenance of Running Ridge. Under cover of the TPA, Chase sold Running Ridge out from under Lange without attempting to work out a modification and without discussing its findings and alternatives regarding a modification with either Lange or Gaviria… (CT 659:3-13).
>
> ¶143. As a direct and proximate result of the fraud and concealment of all subject parties, LANGE has suffered and continues to suffer damages in an amount to be proved at trial. LANGE has suffered and continues to suffer severe emotional distress as a result of the subject defendants' fraud and concealment. LANGE will suffer irreparable injury not compensable in damages if the trustee's sale of Running Ridge is not nullified and the Trustee's Deed Upon Sale is not rescinded. (CT 659:17-23).

The Trial Plan Agreement states, "the payment schedule outlined below must be followed. If you do not make your payments on time, or if any of your payments are returned for non-sufficient funds, this Agreement will be in breach and collection and/or foreclosure activity will resume." (CT 680) (emphasis added).

The fourth paragraph states, "If all payments are made as scheduled, we will reevaluate your application for assistance and determine if we are able to offer you a permanent workout solution to bring your loan current."

Chase now seems to argue that the TPA was an unconscionable ruse, and it makes no claim that Chase or WaMu gave any fleeting consideration to Lange's application.

The implied covenant of good faith and fair dealing was not satisfied if

Chase arbitrarily declined to reevaluate Lange's application for assistance and did not bother to determine if it could offer a permanent workout solution. Losing papers related to loan modifications became a national epidemic as bank fraud soared to unprecedented heights. Lange made timely payments to Chase of 10 x $6,384 = $63,840 as her part of the bargain. As its part of the "bargain," Chase cashed nine of her checks, then sold her house on July 14, 2010, and sent the tenth check back to her one week later on July 20, while Alta and Seaside were posting notices to quit on Lange's door and threatening her with a "very unpleasant" visit from the "very unpleasant" Luke McCarthy (TAC ¶173, CT 666-667). Such outrageous conduct need not be ratified by sustaining a demurrer and dismissing the complaint.

The Trial Plan Agreement continues, "If any part of this Agreement is breached, Washington Mutual has the option to terminate the agreement and begin or resume foreclosure proceedings pursuant to your loan documents and applicable law." It concludes, "I/We agree to the above Agreement and will make payments as outlined above. I/We understand that foreclosure action can be taken if the terms of this Agreement are not met." (CT 680).

The TPA does not say that foreclosure action can be taken whether or not the terms are met. Foreclosure action can be taken if Lange breaches the agreement. She did not breach. The bank breached, then it took her home.

In *Raedeke v. Gibraltar Sav. & Loan Assn.* (1974) 10 Cal.3d 665, 673, 111 Cal.Rptr. 693, the Supreme Court stated:

> Cal. Civ. Code §1698 provides that "A contract in writing may be altered by a contract in writing, or by an executed oral agreement, and not otherwise." We have held that if there exists sufficient consideration for an oral modification agreement, then full

> performance by the promisee alone would suffice to render the agreement "executed" within the meaning of section 1698. (*D.L. Godbey & Sons Const. Co. v. Deane*, 39 Cal.2d 429, 432 [246 P.2d 946]; see *Healy v. Brewster*, 251 Cal. App.2d 541, 551 [59 Cal. Rptr. 752]; *Weber v. Jorgensen*, 16 Cal. App.3d 74, 80-82 [93 Cal. Rptr. 668].) In the absence of consideration, a gratuitous oral promise to postpone a sale of property pursuant to the terms of a trust deed ordinarily would be unenforceable under section 1698. *Karlsen v. American Sav. & Loan Assn*. (1971) 15 Cal.App.3d 112, 121 [92 Cal. Rptr. 851].
>
> Plaintiffs' alleged procurement of a responsible, prospective purchaser at Gibraltar's request would constitute good consideration for Gibraltar's promise, since such procurement was not originally part of the bargain between plaintiffs and Gibraltar, and constituted both detriment to plaintiffs (through the expenditure of time and energy negotiating with possible purchasers) and benefit to Gibraltar (through the potential substitution of a solvent purchaser in place of plaintiffs, rendering foreclosure unnecessary). Such detriment and benefit each would constitute "good consideration for a promise" in this state. (Civ. Code, § 1605; see Corbin, Contracts, § 192, at pp. 180-181; Rest. Contracts, § 84, subd. (c); *House v. Lala*, 214 Cal. App.2d 238, 243 [29 Cal. Rptr. 450]; *Anchor Cas. Co. v. Surety Bond Sav. & Loan Assn.,* 204 Cal. App.2d 175, 181-182 [22 Cal. Rptr. 278].)

Appellant's Opening Brief incorrectly cited *Nguyen* for the proposition that a lender's alleged breach of an oral agreement to postpone a trustee's sale is grounds for setting aside the sale. This was argued as the result of a misinterpretation of a sentence in *Lona v. Citibank, N.A.* (6th Dist. 2011) 202 Cal.App.4th 89, 106:

> This court's holding in *Nguyen*, however, is not so narrow. In that case, we addressed two grounds for setting aside a trustee's sale: (1) alleged irregularity in the procedure coupled with inadequate price; and (2) the lender's alleged breach of an oral agreement to postpone the trustee's sale. *Nguyen*, *supra*, 105 Cal.App.4th at pp. 444-445.

Nguyen went on to state, "In this case, then, we conclude that 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."

There was adequate consideration for Chase to bargain for a new agreement with Lange. Foreclosure litigation is costly. Lange was represented by an attorney, Julia Gaviria. Chase had ample reasons to suspend the foreclosure. In *Nguyen v. Calhoun* (6th Dist. 2003) 105 Cal.App.4th 428, 444-445, no one involved with the escrow properly tendered performance of the oral agreement, whereas in Raedeke, plaintiffs fulfilled their promise to procure a purchaser prior to the foreclosure sale.

Chase's brief argues, "Appellant's blatant misrepresentation of the case law in this regard (*Nguyen*) demonstrates the deficiencies of her claim." That seems a little farfetched. If the trial plan agreement was a temporary measure and required only suspension of the foreclosure of Running Ridge from September to November 2009, then why did Chase, a 2.4 trillion-dollar bank, keep cashing her checks for another six months and deposit an additional $38,304.00 in its vault?

Susan Lange paid $6,384 per month to Chase for nine months in a sincere effort to save her home. At the very least, even accepting Chase's argument that there is no legal requirement for a lender to provide for a loan modification, a stance taken by the large banks that has diminished their standing among the American people, there was still a requirement that Chase reevaluate Lange's application. Chase seems to argue that it brought nothing to the table but callous disregard for Lange's sincerity.

Ragland v. U.S. Bank (Fourth Dist., Sept. 11, 2012, No. G045580) weighed an argument that a breach of contract cause of action could be framed as promissory estoppel in an amended complaint.

> On appeal, she does not attempt to support a claim of breach of oral contract and argues instead, "[t]he second cause of action for

> breach of oral promise to investigate should have been labeled as a cause of action for promissory estoppel." While conceding the second cause of action does not include the required allegation of detrimental reliance (*Kajima/Ray Wilson v. Los Angeles County Metropolitan Transportation Authority* (2000) 23 Cal.4th 305, 310), she argues a detrimental reliance allegation may be extrapolated from the fraud cause of action.
>
> The second cause of action did not incorporate by reference the allegations of the fraud cause of action. Ragland argues we must ignore labels, but however labeled, the second cause of action does not allege promissory estoppel. On remand, Ragland may seek leave to amend her complaint to allege a promissory estoppel cause of action.

In fulfilling her promise to make monthly payments, and by making substantial improvements to the property, Susan Lange satisfied the requirement of detrimental reliance. Chase has not offered any evidence that it gave any consideration to modifying Susan Lange's loan.

VI. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS IS A FORESEEABLE RESULT OF RESPONDENTS' CONDUCT

Ragland stated that the elements of a cause of action for intentional infliction of emotional distress are (1) the defendant engages in extreme and outrageous conduct with the intent to cause, or with reckless disregard for the probability of causing, emotional distress; (2) the plaintiff suffers extreme or severe emotional distress; and (3) the defendant's extreme and outrageous conduct was the actual and proximate cause of the plaintiff's extreme or severe emotional distress. "Outrageous conduct" is conduct that is either intentional or reckless, and it must be so extreme as to exceed all bounds of decency in a civilized community. *Potter v. Firestone Tire & Rubber Co.* (1993) 6 Cal.4th 965, 1001. The defendant's conduct must be directed at the plaintiff (*Id*. at p. 1002). Malicious or evil purpose is not

essential to liability, however. *KOVR-TV, Inc. v. Superior Court* (1995) 31 Cal.App.4th 1023, 1031 [37 Cal.Rptr.2d 431].

It can be very depressing and shocking to lose one's home. It represents loss of stability, a feeling of failure, and shame. It is scary and overwhelming. Loss of a home ranks with loss of a close loved one and loss of a job as among the top causes of extreme stress and despair for people.

In the usual case, outrageousness is a question of fact. *Angie M. v. Superior Court* (1995) 37 Cal.App.4th 1217, 1226 [44 Cal.Rptr.2d 197]; *Trerice v. Blue Cross of California* (1989) 209 Cal.App.3d 878, 883 [257 Cal.Rptr. 338]; *Spinks v. Equity Residential Briarwood Apt.* (2009) 171 Cal.App.4th 1004, 1045. The defendants in *Spinks* were landlords of an apartment complex in which the plaintiff resided under a lease entered into by her employer. When the plaintiff's employment was terminated following an industrial injury, the defendants, at the employer's direction, changed the locks on the plaintiff's apartment, causing her to leave her residence. (*Id*. at p. 1015.)

Spinks rejected the contention the defendants' conduct was not outrageous as a matter of law: "First, as a general principle, changing the locks on someone's dwelling without consent to force that person to leave is prohibited by statute. [Citation.] Though defendants' agents were polite and sympathetic towards plaintiff, they nevertheless caused her to leave her home without benefit of judicial process. . . . 'While in the present case no threats or abusive language were employed, and no violence existed, that is not essential to the cause of action. An eviction may, nevertheless, be unlawful even though not accompanied with threats, violence or abusive language. Here the eviction was deliberate and intentional. The conduct of defendants was outrageous.'" (Id. at pp. 1045-1046.) In addition, the defendants' onsite property manager had expressed concern over the

legality of changing the locks, and the plaintiff was particularly vulnerable at the time because she was recovering from surgery. (Id. at p. 1046.)

Ragland continued, "Defendants argued that *Spinks* was inapposite because changing locks on an apartment to force the tenant to leave is unlawful, while, in contrast, Downey Savings proceeded with a lawful foreclosure after Ragland defaulted and had a legal right to protect its economic interests. (citations). This argument assumes Downey Savings had the right to foreclose, an issue at the heart of the case.

Susan Lange raises similar triable issues of fact. Chase's right to foreclose is at the heart of her case. Her treatment by Chase was at least as onerous as the conduct of the defendants in *Spinks* and was so extreme as to exceed all bounds of decency.

Defendants argue that the balance of hardships tips in their favor because plaintiff is thousands of dollars behind on his mortgage payments and delayed over seven months in bringing suit. Defendants' monetary loss, however, does not outweigh the harm plaintiff would suffer if he lost his home, especially considering that any security defendants have in plaintiff's property will still remain. *Osorio v. Wells Fargo Bank* (N.D.Cal. May 24, 2012, No. 12-02645) .

VII. FINAL JUDGMENT RULE BARS PIECEMEAL APPELLATE REVIEW OF THE COURT'S ORDERS BARRING ADDITIONAL DEFENDANTS

Respondents argue that Judge Borrell's Order on July 11, 2011, granting his own motion to strike allegations adding new parties to the TAC required that an appeal be filed within 60 days of the order. Chase applies the same logic to the court's order denying Plaintiff's Motion for Leave to

Amend her TAC on March 24, 2011.

An appeal may be taken only from a final judgment. An appeal may not be taken from a judgment that disposes of less than all the causes of action between the parties. *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 806; *Bank of America v. Superior Court* (1942) 20 Cal.2d 697, 701.

Where all the causes of action set forth in the complaint have a single object, an appeal will not be permitted from a judgment disposing of only one count of the complaint. *Mather v. Mather* (1936) 5 Cal.2d 617, 618.

To prevent piecemeal litigation through appeals from orders that dispose of less than an entire action, the final judgment rule, as codified in Cal. Code Civ. Proc. §904.1 and 904.2 generally allows an appeal only from a final judgment or from an order that has been expressly made appealable by statute. *Stephen v. Enterprise Rent-A-Car* (1991) 235 Cal.App.3d 806, 811, 1 Cal.Rptr.2d 130]. An interlocutory order denying the addition of new parties is not enumerated as appealable in §904.1, but it is similar to an order denying class certification, which is appealable only if it is equivalent to a final judgment.

The denial of certification to an entire class is an appealable order. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435, 97 Cal.Rptr.2d 179. In contrast, an order denying class certification that does not dispose of all the causes of action between the parties is not appealable until final judgment. *Farwell v. Sunset Mesa Property Owners* (2008) 163 Cal.App.4th 1545, 78 Cal.Rptr.3d 666. Similarly, an order granting class certification but limiting or restricting the class is not immediately appealable, because it can be fully reviewed on appeal from a final judgment on the class claims. *Estrada v. RPS, Inc.* (2005) 125 Cal.App.4th 976, 23 Cal.Rptr. 3d 261.

Judge Borrell limited the size of the class to Chase, Alta, and Seaside, allowing the individuals – Kaufman, McCarthy, et al – to get away with

conduct that had hyappened only eight months earlier. There was no reason for a rush to judgment.

Alta and Seaside's brief illustrates the challenge faced by Susan Lange in presenting her case before Roger Senders substituted as her attorney and filed his first pleading on December 2, 2010, an Opposition to Demurrer. He stated his intention to file a motion to add new parties and causes of action to the complaint (CT 287: 14-17).

Before defendants' demurrers could be heard on March 16, 2011, Senders asked leave to file a third amended complaint adding new parties. Although the first two complaints had been drafted by Gaviria, Judge Borrell refused Senders an opportunity to add new parties to the third amended complaint nine months after the original complaint had been filed as he made "self-evident" factual findings.

Judge Borrell wrote, "In defendants' eyes, the value of the property depreciates with each passing day, although no evidence to substantiate this assertion has been presented. But what is self-evident is that the asset is frozen, such that it may not be occupied, transferred, encumbered or developed by the purchaser at the trustee's sale… Counsel's barren assertion that this is plaintiff's first real opportunity to plead her case is inconsistent with the facts. Plaintiff has squandered considerable time when in fact time was of the essence" (CT 607-608).

So the court's denial of Senders' amendment adding new parties was based on his concern for a possible delay in evicting Susan Lange from her home, although she was paying $6,000 per month into the trust account of Seaside's attorney, William Schneberg.

In his recital of Gaviria's First Amended Complaint, Mr. Cohen employs the word (*sic)* eight times in three pages (Respondent's Brief, pages 5– 7) and then argues, "the complaint was so badly written that it was

impossible to tell what was being alleged or what appellant wanted."

Susan Lange switched lawyers as soon as she smelled the smoke. The court could have cut Senders a little slack. He was given four weeks over Christmas vacation to amend Gaviria's First Amended Complaint—and then he was refused the court's permission to add indispensible parties, evidently to protect their investment portfolios.

Date: September 22, 2012

Respectfully submitted

_____

Douglas Gillies
Attorney for Plaintiff/Appellant Susan Lange

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 Douglas Gillies is produced using 13-point Roman type including footnotes and contains approximately 8,800 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: 09/22/12

Signed: _____

Print Name: Douglas Gillies

Attorney(s) for: Susan Lange

PROOF OF SERVICE

I, Douglas Gillies, declare:

I am at least 18 years of age and not a party to the above-entitled action. My address is 3756 Torino Drive, Santa Barbara, California.

On September 24, 2012, I served the foregoing APPELLANT'S REPLY BRIEF on the parties by depositing a true copy thereof in the United States mail in Santa Barbara, California, enclosed in a sealed envelope, with postage fully prepaid, addressed to:

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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. Executed on September 24, 2012, at Santa Barbara, California.

_____
Douglas Gillies