

1 Law Office of Richard W. Snyder
Richard W. Snyder, Esq.
2 131 N. Tustin Avenue, Ste. 200
Tustin, CA 92780
3 Tel. (714) 505-7585 x250
Fax (714) 505-7588
4 Attorney for Plaintiff
Billie Rene' Frances Lillian Powers
5

6 **UNITED STATES DISTRICT COURT**
7 **CENTRAL DISTRICT OF CALIFORNIA**
8 **SANTA ANA DIVISION**
9

10 BILLIE RENE' FRANCES LILLIAN)
11 POWERS,)

12 Plaintiff,)

13 vs.)

14)
15)
16 COUNTRYWIDE HOME LOANS, INC.;)
COUNTRYWIDE BANK, FSB;)
COMMONWEALTH LAND TITLE)
17 INSURANCE COMPANY; MORTGAGE)
ELECTRONIC REGISTRATION SYSTEMS,)
18 INC. "MERS"; BANK OF AMERICA, N.A.;)
RECONTRUST COMPANY, N.A.; BAC)
19 HOME LOANS SERVICING, LP; QUALITY)
LOAN SERVICING CORPORATION ;)
20 SELECT PORTFOLIO SERVICING, INC.;)
THE BANK OF NEW YOUR MELLON)
21 F/K/A THE BANK OF NEW YORK, AS)
TRUSTEE, ON BEHALF OF THE)
22 HOLDERS OF THE ALTERNATIVE LOAN)
TRUST2007-HY9, MORTGAGE PASS-)
23 THROUGH CERTIFICATES SERIES 2007-)
HY9; THE BANK OF NEW YOUR)
24 MELLON F/K/A THE BANK OF NEW)
YORK, AS TRUSTEE , FOR THE)
25 CERTIFICATE HOLDERS, ALTERNATIVE)
LOAN TRUST 2007-HY9 MORTGAGE)
26 PASS THROUGH CERTIFICATES, SERIES)
2007-HY9; JON SECRIST; ANDDOES 1 TO)
27 50,)

28 Defendant(s).)

Case No.: VC066339

) EX PARTE APPLICATION FOR
) TEMPORARY RESTRAINING ORDER AND
) ORDER TO SHOW CAUSE WHY
) PRELIMINARY INJUNCTION SHOULD
) NOT BE GRANTED

) Date:

) Time:

) Dept:

) Judge:

1
2 Please take notice that by this motion, Plaintiff does hereby move this honorable court for
3 an immediate order restraining and enjoining defendants and their agents, employees, and
4 person acting with them or on their behalf from taking possession of, selling or attempting to
5 sell the property that is the subject of the underlying complaint.

6 Plaintiff further moves the Court to enjoin the above named defendants and their agents
7 from moving to evict or evicting Plaintiff (or if lockout has already occurred restoring Plaintiff
8 into possession) from said property while the Court litigates the Complaint on the basis of the
9 merits. Plaintiff also moves for an order directing defendants to Show Cause why a preliminary
10 or permanent injunction should not be granted.

11 Plaintiff further requests that any bond requirement be waived. *See Gilmore v. Wells*
12 *Fargo Bank N.A., 2014 WL 3749984, at *6 (N.D. Cal. July 29, 2014)* (“[A] court ... has the
13 discretion to waive the bond requirement if there is a high probability of success that equity
14 compels waiving the bond, the balance of the equities overwhelming favors the movant, it
15 appears unlikely that the defendant will suffer any harm as a result of the preliminary
16 injunction, or the requirement of a bond would negatively impact the movant’s constitutional
17 rights.”).

18 The attached Memorandum of Points and Authorities supports this motion.

19 Date: June 1, 2017

Respectfully,

20
21 _____
22 Richard W. Snyder, Esq.
23 Attorney for Plaintiff
24
25
26
27
28

1 MEMORANDUM OF POINTS AND AUTHOIRTIES IN SUPPORT OF MOTION FOR
2 TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

3 I.

4 INTRODUCTION

5
6 On or about April 13, 2007, the plaintiff Billie Rene' Frances Lillian Powers ("Plaintiff")
7 executed a Residential Purchase Agreement and Joint Escrow Instructions respecting her
8 intended purchase of the real property located at 40701 Ortega Hwy, San Juan Capistrano
9 (unincorporated), CA 92530 ("Property") and has resided thereat at all times subsequent thereto
10 but prior to the filing of the First Amended Complaint ("FAC") in this matter. From the very
11 moment of the opening of the purchase escrow through the filing of the FAC, Plaintiff has been
12 the victim of numerous fraud schemes respecting the title to the Property.

13
14 **Fraud in the Grant Deed**

15 In the process of the purchase, on or about April 17, 2007, a document titled "Additional
16 Escrow Instructions" was executed. The instructions indicated that title was to be vested in
17 Plaintiff solely (see Exhibit "1"). On April 26, 2007, the seller of the Property Roger Lee
18 Delong ("Seller") executed a Grant Deed (the "True Grant Deed") naming Plaintiff as the sole
19 grantee. On May 15, 2007, an addendum to the Residential Purchase Agreement was prepared
20 indicating the Plaintiff as the sole buyer (see Exhibit "2"). On May 29, 2007, the Plaintiff
21 received 2 documents each titled "Escrow Modification". Each of said documents identified the
22 Plaintiff as the only buyer (see Exhibit "3"). Sometime between June 1, 2007 and June 15, 2007,
23 the Plaintiff was advised by Lender that she no longer qualified for the prospective loans and that
24 she need to have a co-signor (see Exhibit "4"). At this time, OVER A MONTH AFTER the True
25 Trust Deed was executed and notarized, the Plaintiff's sister and brother-in-law Louise J. Hanson
26 and Jacqueline M. Hanson agreed to co-sign.

1 At closing, on July 2, 2007, a materially altered version of the True Grant Deed (the
2 “Fraud Grant Deed”) was recorded¹ (see Exhibit “5”). The Fraud Grant Deed was altered to
3 remove the Plaintiff’s name and then insert, with what appears to be a typewriter, the names
4 “Billie Rene Powers”, “Louise J. Hanson”, and “Jacqueline M. Hanson”.

5 Aside from the fact that Louis J. Hanson and Jacqueline M. Hanson were not named in
6 the escrow instructions nor a party to the Residential Purchase Agreement at the time the True
7 Trust Deed was executed and would therefore never be included in the documents theretofore
8 drafted, the notary Nancy F. Ganzon, who prior to August 2014 was a stranger² to Plaintiff
9 executed an affidavit (see Exhibit “7”) wherein she testified and will further testify if needed,
10 that the Fraud Grant Deed, bearing her signature and notary stamp, is not the document that she
11 notarized, but instead is an altered version of the one she notarized. The post notarization
12 material alteration of the True Grant Deed rendered the Fraud Grant Deed void.

13
14 **The Deed of Trust Failed to Convey Any Interest in the Property**

15 Pursuant to the illusory powers granted to her in the Fraud Grant Deed, on June 27, 2007,
16 Plaintiff executed a Deed of Trust (the “1st DOT”, see Exhibit “8”) on her own behalf and on
17 behalf of Louis J. Hanson and Jacqueline M. Hanson via 2 powers of attorney. The Fraud Grant
18 Deed and the 1st DOT were recorded sequentially on July 2, 2007 as document numbers
19 2007000417170 and 2007000417171. On the 1st DOT, the “Lender” is Countywide Bank, FSB
20 (“Lender”), the “Trustee” was ReconTrust Company, N.A. (“DOT Trustee”), and Mortgage
21 Electronic Registration Systems, Inc, (“Mers”) a Delaware company was identified as the
22 “Beneficiary” acting solely as the nominee for Lender. Because the Fraud Grant Deed was void,
23 Plaintiff received nothing by way of the Fraud Grant Deed. In turn, when Plaintiff executed the
24 1st DOT and “conveyed” the Property to the DOT Trustee for the benefit of Mers as nominee for
25

26 ¹ All references to a document being “recorded” refer to being recorded in the office of the
27 County Recorder for the County of Orange, State of California unless clearly expressed or implied
otherwise.

28 ² In support of her testimony that she did not know the Notary Nancy F. Ganzon, Exhibit “6” is a
copy of a form for a complaint with the State of California, Secretary of State, Notary Public
Section, requesting information on the Notary.

1 Lender, Plaintiff had no interest in the Property to convey and the DOT Trustee, Mers, and
2 Lender received nothing.

3
4 **Fraud in the Assignment of the 1st DOT**

5 On or about October 26, 2010, a document titled “Corporate Assignment of Deed of
6 Trust” (“Assignment of DOT”, see Exhibit “9”) was recorded purporting to assign the 1st DOT to
7 The Bank of New York Mellon fka The Bank of New York, as Trustee, **for the**
8 **Certificateholders CWALT Inc.**, Alternative Loan Trust 2007-HY9 Mortgage Pass-Through
9 Certificates, Series 2007-HY9 (“BONY as Trustee”)(emphasis added). The Assignment of DOT
10 was purportedly signed by Nichole Clavadetscher in her capacity as a Certifying Officer of Mers.
11 The Assignment of DOT was purported to have been notarized by Jon Secrist (“Secrist”), whose
12 notary commission number is 1893949.

13 On or about November 16, 2012, Plaintiff initiated a claim with Merchants Bonding
14 Company (“Bond Co”) who provided a notary bond for the notary, Secrist (see Exhibit “10”).
15 Through its claim Plaintiff alleged that the signature for Nichole Clavadetscher on the
16 Assignment of DOT was not genuine and therefore, Secrist’s representation on the notary
17 acknowledgement, made under penalty of perjury, that Nichole Clavadetscher personally
18 appeared before him, was false. In its November 29, 2012 reply letter asking for more
19 information to substantiate the Plaintiff’s claim, Bond Co stated that it only paid actual damages
20 (see Ex. “10”, pg 1, ¶ 3) and that policy limit was \$15,000.00 (see Ex. “10”, pg 3). On or about
21 December 6, 2012, Plaintiff submitted a written “Proof of Claim” to Bond Co (see Exhibit “11”).
22 Thereafter, on or about February 27, 2013 (after nearly 3 month time to investigate its liability)
23 Bond Co paid Plaintiff the full policy limit of \$15,000.00 in settlement of Plaintiff’s claim (see
24 Exhibit “12”). The forged signature of Nichole Clavadetscher on the Assignment of DOT
25 rendered it void.

1 **The Assignment of DOT was to BONY as Trustee, However Subsequent to the**
2 **Assignment, a Substitution of Trustee, a Notice of Default and a Trustee’s Deed Upon Sale**
3 **Were All Executed in a Different Name.**

4 The Assignment of DOT purports to transfer the beneficial interest under the 1st DOT to
5 an entity named “The Bank of New York Mellon fka The Bank of New York, as Trustee, **for the**
6 **Certificateholders CWALT Inc.**, Alternative Loan Trust 2007-HY9 Mortgage Pass-Through
7 Certificates, Series 2007-HY9” (emphasis added)(see Exhibit “9”).

8 On February 28, 2014, a Substitution of Trustee, purporting to substitute Quality Loan
9 Service Corporation (“Quality”) as a successor trustee to the DOT Trustee (see Exhibit “13”)
10 was recorded. On the 4th page of the Notice of Default, the beneficiary is identified as “The
11 Bank of New York Mellon fka The Bank of New York, as Trustee, **on behalf of the holders of**
12 **the** Alternative Loan Trust 2007-HY9 Mortgage Pass-Through Certificates, Series 2007-HY9”.
13 (“BONY for Wrong Trust”)(emphasis added). The beneficiary name on the Notice of Default is
14 materially different from that contained in the 1st DOT and the Assignment of DOT, in that the
15 word “for the Certificateholders of the Cwalt, Inc.” (in the 1st DOT and the Assignment of DOT)
16 was replaced with the words “on behalf of the holders” (in the Substitution of Trustee). The
17 name of the beneficiary making the substitution of trustee was clearly not BONY for Trustee as
18 identified on the 1st DOT and the Assignment of DOT.

19 On September 25, 2014, a Notice of Default, claiming to be a notice of default on the 1st
20 DOT (see Exhibit “14”, pg 2, circled item 1) was recorded. On the 4th page of the Notice of
21 Default, the beneficiary was identified as BONY for Wrong Trust, the exact same way it was
22 identified in the Substitution of Trustee. The name of the beneficiary on behalf of which Quality
23 was recording the Notice of Default was clearly not BONY as Trustee, but rather was BONY for
24 Wrong Trust.

25 On August 8, 2016, a Trustee’s Sale was conducted by Quality and on August 8, 2016,
26 Quality recorded a Trustee’s Deed Upon Sale (see Exhibit “15”). On the Trustee’s Deed Upon
27 Sale, the grantee was identified as BONY for Wrong Trust, the exact same way it was identified
28 in the Substitution of Trustee and the Notice of Default. The name of the beneficiary/grantee on

1 behalf of which Quality was conducted the trustee's sale and on whose behalf Quality recorded
2 the Trustee's Deed Upon Sale and who was the putative credit purchaser, was clearly not the
3 beneficiary identified on the 1st DOT and the Assignment of DOT. Furthermore, on the
4 Trustee's Deed Upon Sale, it states that the grantee on the Trustee's Deed Upon Sale was the
5 foreclosing beneficiary, when clearly it was not.

6 7 II.

8 STANDING

9 In Yvanova v. New Century Mortgage Corp., 62 Cal. 4th 919 (2016), the California
10 Supreme Court addressed "[u]nder what circumstances, if any, may the borrower challenge a
11 nonjudicial foreclosure on the ground that the foreclosing party is not a valid assignee of the
12 original lender." (Id. at p. 928.)

13 The California Supreme Court decided that question as follows:

14 "We conclude a home loan borrower has standing to claim a nonjudicial
15 foreclosure was wrongful because an assignment by which the foreclosing party
16 purportedly took a beneficial interest in the deed of trust was not merely voidable
17 but void, depriving the foreclosing party of any legitimate authority to order a
18 trustee's sale." (Id. at pp. 942-943.)

19 The court in Yvanova also considered whether a borrower must show prejudice when it
20 addressed the defendants' argument that an allegedly invalid assignment leading to a foreclosure
21 by an unauthorized party causes no harm or prejudice to a borrower in default of a loan because
22 the actual holder of the beneficial interest under the deed of trust could have foreclosed on the
23 property. (Yvanova at 937.) The court stated:

24 "As it relates to standing, we disagree with defendants' analysis of prejudice from
25 an illegal foreclosure. A foreclosed-upon borrower clearly meets the general
26 standard for standing to sue by showing an invasion of his or her legally protected
27 interests [citation]—the borrower has lost ownership to the home in an allegedly
28 illegal trustee's sale."

29 The court also rejected the view that an offer of tender of the amount of the secured
30 indebtedness, or an excuse of tender, was needed to establish the borrower's standing. (Yvanova
31 at 929, fn. 4.) In Yvanova, the California Supreme Court unanimously rejected the argument
32 that borrower standing required a showing of prejudice and a tender of the balance due on the

1 loan. (Yvanova at 929, fn. 4.) Under Yvanova, a borrower has standing to challenge a
2 foreclosure by an unauthorized entity.

3
4 III.

5 STANDARD

6 “In deciding whether to issue a preliminary injunction, a court must weigh two
7 “interrelated factors: (1) the likelihood that the moving party will ultimately prevail on the merits
8 and (2) the relative interim harm to the parties from issuance or nonissuance of the
9 injunction...[P] The trial court’s determination must be guided by a “mix” of the potential-merit
10 and interim-harm factors; the greater the plaintiff’s showing on one, the less must be shown on
11 the other to support the injunction.... A trial court may not grant a preliminary injunction,
12 regardless of the balance of interim harm, unless there is some possibility that the plaintiff,
13 would ultimately prevail on the merits of the claim. (*Butt v. State of California* (1992 4 Cal. 4th
14 668, 677-678; see generally *Code Civ. Proc.*, §§526.527).

15 “The general purpose of [a preliminary] injunction is the preservation of the status quo
16 until a final determination of the merits of the action. “(*Continental Baking Co. v. Katz* (1968)
17 68 Cal. 2d 512, 528; see also *Nutro Products, Inc. v. Cole Grain Co.* (1992) 3 Cal. App. 4th 860
18 865). In *IT Corp. v. County of Imperial*, 35 Cal. 3d 63, at pages 69-70 (1983), the court stated
19 “[By] balancing the respective equities of the parties, [the trial court] concludes that, pending a
20 trial on the merits, the defendant should or that she should not be restrained from exercising the
21 right claimed by her”.

22
23 IV.

24 ARGUMENT FOR RELIEF

25 A recent California Supreme Court gave guidance to the trial courts that a borrower has
26 standing to sue for wrongful foreclosure based on an allegedly void assignment. (see Yvanova,
27 supra.) In this case at bar, the evidence will show that, as a result of 2 void conveyances and a
28 missing conveyance in the chain of title, Plaintiff has never held title to the Property, BONY as

1 Trustee has never held any interest in the Property whatsoever, and BONY for Wrong Trust has
2 never held any interest in the Property whatsoever. (BONY as Trustee and BONY for Wrong
3 Trust are hereinafter cumulatively referred to as “Defendants”). Having no interest in the
4 Property, the Defendants, and each of them, fraudulently moved forward with a non judicial
5 foreclosure sale of Plaintiff’s property without any lawful authority to do so.

6 As explained below, the facts alleged in the amended complaint and the facts judicially
7 noticeable do not establish an unbroken or perfect chain of title from Plaintiff to either of the
8 Defendants.

9
10 **1. The Links in Defendants' Purported Chain of Title.**

11 "Links" in a chain of title are created by a transfer of an interest in the underlying
12 property from one person or entity to another. An examination of each link in the purported
13 chain of title relied upon by the Defendants reveals that certain links were not established.
14 Analysis begins with a description of each link in the purported chain (and each related
15 document), beginning with the Seller who sold the residence to Plaintiff and ending with the
16 trustee's sale to BONY for Wrong Trust.

17
18 **Link 1 – Sale to the Plaintiff:** Seller agreed to sell the Property to Plaintiff. On April 26, 2007
19 he executed the True Grant Deed granting a fee simple interest in the Property to Plaintiff and
20 delivered the True Grant Deed to West Coast Escrow. The True Grant Deed was never recorded
21 and therefore never delivered to the Plaintiff. Without delivery, the True Grant Deed failed to
22 convey any interest in the Property to the Plaintiff. Sometime between April 26, 2007 and July
23 2, 2007, the True Grant Deed was materially altered into the Fraud Grant Deed. The forgery of
24 the Fraud Grant Deed is supported by the following facts:

- 25 1) The Additional Escrow Instructions dated April 17, 2007, dated just 9 days prior
26 to the execution of the True Grant Deed, indicated title was to be in the name of
27 the Plaintiff only (see Exhibit “1”).
28

- 1 2) On April 26, 2007, Seller executed the True Grant Deed naming Plaintiff as the
2 only buyer as per the Additional Escrow Instructions.
- 3 3) On May 15, 2007, an addendum to the Residential Purchase agreement was
4 prepared. The addendum identified the Plaintiff as the only buyer (see Exhibit
5 “2”).
- 6 4) As of May 29, 2007, the Plaintiff received 2 documents titled “Escrow
7 Modification” and each identified Plaintiff as the only buyer (see Exhibit “3”).
- 8 3) On or about June 1, 2007, Lender advised the Plaintiff that she did not qualify for
9 the financing she sought and that she would need a co-signor. Between June 1,
10 2007 and June 13, 2007, **long after the True Grant Deed was executed**, the
11 Plaintiff’s sister and brother-in-law Louis J. Hanson and Jacqueline M. Hanson
12 agreed to co-sign for the Plaintiff.
- 13 4) On June 15, 2007, an addendum to the Residential Purchase Agreement was
14 prepared stating that “Jackie and Louie Hanson and Rene Powers” will be on title
15 (see Exhibit “4”).
- 16 5) The Closing Instructions dated June 27, 2007, dated after the True Grant Deed
17 was executed indicated title was to be in the name of the Plaintiff and Louis J.
18 Hanson.
- 19 6) On July 2, 2007, the Fraud Grant Deed, executed and notarized on April 26, 2007,
20 was recorded (see Exhibit “5”). The Fraud Grant Deed was an altered version of
21 the True Grant Deed. On the Fraud Grant Deed, Plaintiff’s name was removed,
22 and someone using a typewriter, inserted the names “Billie Rene Powers”,
23 “Louise J. Hanson”, and “Jacqueline M. Hanson”. (the name “Louise” is a mis-
24 spelling of “Louis”).
- 25 7) On or about August 27, 2014, the notary Nancy F. Ganzon, who prior to August
26 2014 was a stranger to the Plaintiff, executed an affidavit (see Exhibit “7”),
27 wherein she testified and will further testify if needed, that the Fraud Grant Deed,
28

1 bearing her signature and notary stamp, is not the document that she notarized,
2 but instead is an altered version of the one she notarized.

3 In La Jolla Grp. II v. Bruce, 211 Cal.App.4th 461 (2014) the court stated that “a Deed that
4 has been materially altered after it was signed is a forgery.” The court in La Lolla Grp. II, went
5 on to cite Montgomery v. Bank of America, 85 Cal. App. 2d 559, 563 (1948) where the court
6 stated “Since the deed was altered without the knowledge, consent or approval of plaintiffs, after
7 it had been signed by them and transmitted to the escrow holder, it was void. The court in
8 Montgomery at 564 went on to cite Trout v. Taylor, 220 Cal. 652, 656 for the statement that a
9 “void instrument such as an undelivered or a forged deed does not convey anything and cannot
10 be made the foundation of a good title.” (Trout v. Taylor, 220 Cal. 652, 656 [32 P.2d 968])

11 Here, the Additional Escrow Instructions dated April 17, 2007, executed just 9 days prior
12 to the execution of the True Grant Deed clearly provided for title to be taken in the name of
13 Plaintiff only. On April 26, 2007, Seller executed and the notary notarized the True Grant Deed
14 to the Plaintiff only (as she was the only name on the Amended Escrow Instructions at that time
15 and the 2 co-signors had not appeared in the transaction and would not so appear until at least 30
16 days later) and thereafter it was delivered it to escrow. Sometime in the beginning of June 2007,
17 the Lender required a co-signor. The Plaintiff’s relatives Louis J. Hanson and Jacqueline M.
18 Hanson agreed to co-sign, long after the True Grant Deed was executed. In preparation for
19 closing, on June 27, 2007, the 1st DOT was drafted to include all 3 names “Billie Rene Powers”,
20 “Louis J. Hanson”, and “Jacqueline M. Hanson”. However, rather than have the Seller execute a
21 new Grant Deed, someone altered the True Grant Deed by removing the name “Billie Rene
22 Powers” and typing into the document “Billie Rene Powers”, “Louise J. Hanson”, and
23 “Jacqueline M. Hanson” in an attempt to have it conform to the 1st DOT.

24 The post notarization material alteration of the True Grant Deed rendered the Fraud Grant
25 Deed a forgery and as such it was and is now void. The Fraud Grant Deed could not and did not
26 convey anything to the Plaintiff and cannot and did not provide the foundation of a good title to
27 the Plaintiff. Link 1 in the chain of title is broken.

1 **Link 2 - 1st DOT to Lender:** Pursuant to the illusory powers granted to her in the Fraud Grant
2 Deed, on June 27, 2007, the Plaintiff executed the “1st DOT”. Because the Fraud Grant Deed
3 was void, Plaintiff received nothing by way of the Fraud Grant Deed. In turn, when Plaintiff
4 executed the 1st DOT and “conveyed” the Property to the DOT Trustee for the benefit of Mers as
5 nominee for Lender, Plaintiff had no interest in the Property to convey. “A mortgage assignment
6 is void, not merely voidable, where the assignor “had nothing to assign” or “no interest to
7 assign” Sciarratta v. U.S. Bank National Association, 247 Cal.App4th 552, 564 (2016) citing
8 Culhane v. Aurora Loan Services of Nebraska, 708 F.3d 282, 291 (1st Cir. 2013).

9 The Defendants can not rely on their putative status as a bona fide purchaser. In La Lolla
10 Grp. II at 477-478, the court, citing Schiavon v. Arnauado Brothers, 84 Cal.App. 4th 374, 378
11 (2000), stated that “[a]lthough the law protects innocent purchasers and encumbrancers, that
12 protection extends only to those who obtained good legal title... [A] forged document is void ab
13 initio and constitutes a nullity; as such it cannot provide the basis for a superior title...” (citations
14 omitted, internal quotation marks omitted). Because of the failure of Link 1, Link 2 is
15 necessarily broken.

16
17 **Link 3 - Purported Transfer via the Assignment of DOT:** Link Three fails for 2 separate and
18 independent reasons.

19 **1.** The first is the natural continuation of the failure of Link 1 and Link 2. Since the
20 Plaintiff received nothing via the Fraud Grant Deed and therefore the Plaintiff granted nothing
21 via the 1st DOT to the DOT Trustee as trustee for the benefit of Mers as nominee for Lender.
22 Naturally, having received no interest in the Property whatsoever from the Plaintiff via the 1st
23 DOT, Mers had nothing to transfer to BONY as Trustee when Mers executed the Assignment of
24 DOT. (see Culhane, supra) Because of the failure of Link 1, Link 2 and Link 3 are necessarily
25 broken.

26 **2.** Notwithstanding the invalidity of the Assignment of DOT for the reasons
27 aforesaid, the Assignment of DOT fails because it is itself a forgery. The Assignment of DOT
28 purports to have been executed by a person named Nichole Clavadetscher and notarized by

1 Secrist. The Plaintiff suspected that the signature of Nichole Clavadetscher was a forgery and as
2 such, Secrist's certification under penalty of perjury, that Nichole Clavadetscher personally
3 appeared before him, provided him with identification, and signed the document, is a false
4 statement.

5 On or about November 16, 2012, the Plaintiff initiated a claim with Bond Co against
6 Secrist's notary bond (see Exhibit "10"). Through its claim Plaintiff alleged that the signature
7 for Nichole Clavadetscher on the Assignment of DOT was not genuine and therefore, Secrist's
8 representation on the notary acknowledgement, made under penalty of perjury, that Nichole
9 Clavadetscher personally appeared before him, was false. In its November 29, 2012 reply letter
10 asking for more information to substantiate the Plaintiff's claim, Bond Co stated that it only paid
11 actual damages (see Ex. "10", pg 1, ¶ 3) and that policy limit was \$15,000.00 (see Ex. "10", pg
12 3). On or about December 6, 2012, Plaintiff submitted a written "Proof of Claim" to Bond Co
13 (see Exhibit "11"). Thereafter, on or about February 27, 2013 (after nearly 3 month time to
14 investigate its liability) Bond Co paid Plaintiff the full policy limit of \$15,000.00 in settlement of
15 Plaintiff's claim (see Exhibit "12"). The forged signature of Nichole Clavadetscher on the
16 Assignment of DOT rendered it void. Link 3 is broken.

17
18 **Link 4 – Purported Transfer from BONY as Trustee to BONY for Wrong Trust:**

19 Independent of the failure of Link 1, Link 2, and Link 3, Link 4 fails. On the Assignment of
20 DOT, the Property was purported to have been transferred from Mers as nominee for Lender to
21 BONY as Trustee. On the Substitution of Trustee, recorded on February 28, 2014, the
22 beneficiary was identified as BONY for Wrong Trust. The record is devoid of a transfer from
23 BONY as Trustee to BONY for Wrong Trust. Link Four is broken.

24
25 **Links 5, 6, and 7 – Substitution of Trustee, Notice of Deafault, and Trustee's Deed Upon**
26 **Sale:** Links 5, 6, and 7 all fail for the same reason. On February 28, 2014 a Substitution of
27 Trustee purporting to substitute Quality Loan Service Corporation ("Foreclosing Trustee") in
28 place of the DOT Trustee. The Substitution of Trustee purports to be made by BONY for Wrong

1 Trust. Since there is no Assignment of the 1st DOT to BONY for Wrong Trust, BONY for
2 Wrong Trust had no power to substitute the Foreclosing Trustee for the DOT Trustee. “[O]nly
3 the current beneficiary may direct the trustee to undertake the nonjudicial foreclosure process.”
4 Yvanova at 928. The appointment of the Foreclosing Trustee failed and Link 5 is broken.

5 Because BONY for Wrong trustee had no power to appoint the Foreclosing Trustee via
6 the Substitution of Trustee, the Foreclosing Trustee lacked any authority to record the Notice of
7 Default (see Exhibit “14”) and the Notice of Trustee’s Sale (see Exhibit “15”), and had no
8 authority to conduct the foreclosure sale and had no authority to issue a valid Trustee’s Deed
9 Upon Sale (see Exhibit “16”). Because of the independent failure of Link 5, Links 6 and 7
10 necessarily fail.

11
12 IV.
13 CONCLUSION

14 For the foregoing reasons and for the uncontravened evidence on file in this case,
15 Plaintiff requests that this honorable court grant a temporary restraining order forthwith and issue
16 an order to the Defendants to show cause why the preliminary injunction should not be granted.

17 Dated: October 11, 2017

18 Respectfully Submitted,

19 _____
20 Richard W. Snyder, Esq.
21 Attorney for the Plaintiff
22 Billie Rene’ Frances Lillian Powers
23
24
25
26
27
28

DECLARATION OF BILLIE RENE' FRANCES LILLIAN POWERS

1
2 1. I, Billie Rene' Frances Lillian Powers, am the Plaintiff herein. I have personal
3 knowledge of all facts set forth herein and if called as a witness to testify thereto I could and
4 would do so.

5 2. On or about April 13, 2007, I executed a Residential Purchase Agreement and Joint
6 Escrow Instructions respecting my intended purchase of the Property. I have resided thereat at
7 all times subsequent to the purchase through the filing of the FAC in this matter.

8 3. West Coast Escrow handled the escrow.

9 4. In the process of the purchase, on or about April 17, 2007, I received a document titled
10 "Additional Escrow Instructions" from West Coast Escrow. The instructions indicated that title
11 was to be vested in myself solely. Attached hereto and identified as Exhibit "1" is a true and
12 correct unsigned copy of the Additional Escrow Instructions dated April 17, 2007.

13 5. On April 26, 2007, the Seller executed the True Grant Deed naming myself as the sole
14 grantee. Thereafter, it was delivered to West Coast Escrow.

15 6. On May 15, 2007, an Addendum to the Residential Purchase Agreement was prepared
16 indicating myself as the sole buyer. Attached hereto and identified as Exhibit "2" is a true and
17 correct copy of the Addendum to the Residential Purchase Agreement dated May 15, 2007.

18 7. On May 29, 2007, I received 2 documents from West Coast Escrow both of which were
19 titled "Escrow Modification". Each of said documents identified myself as the only buyer.
20 Attached hereto and identified as Exhibit "3" is a true and correct copy of the "Escrow
21 Modification" documents dated May 29, 2007.

22 8. Sometime between June 1, 2007 and June 15, 2007, I was advised by Lender that I no
23 longer qualified for the prospective loans an that I need to have a co-signor. At that time, OVER
24 A MONTH AFTER the True Trust Deed was executed and notarized, my sister and brother-in-
25 law Louise J. Hanson and Jacqueline M. Hanson agreed to co-sign. Attached hereto and
26 identified as Exhibit "4" is a true and correct copy of the Addendum to the Residential Purchase
27 Agreement dated June 5, 2007.

1 9. At closing, on July 2, 2007, the Fraud Grant Deed was recorded which is a materially
2 altered version of the True Grant Deed. The Fraud Grant Deed was altered to remove the
3 Plaintiff's name and then insert, with what appears to be a typewriter, the names "Billie Rene
4 Powers", "Louise J. Hanson", and "Jacqueline M. Hanson". Attached hereto and identified as
5 Exhibit "5" is a true and correct copy of the Fraud Grant Deed dated April 26, 2007.

6 10. Prior to August of 2014, I attempted to contact Nancy F. Ganzon, the notary who
7 notarized the True Grant Deed and whose signature and notary stamp appear on the Fraud Grant
8 Deed. At that time she was a stranger to me. When I was unable to find her, I placed a claim
9 against her notary bond. Attached hereto and identified as Exhibit "6" is a true and correct copy
10 of the Complaint Form dated February 25, 2014.

11 11. Sometime in August of 2014, I was contacted by the notary Nancy F. Ganzon. On or
12 about August 27, 2014, Nancy F. Ganzon executed an affidavit wherein she testified that the
13 Fraud Grant Deed, bearing her signature and notary stamp, is not the document that she
14 notarized, but instead is an altered version of the one she notarized. Attached hereto and
15 identified as Exhibit "7" is a true and correct copy of the Affidavit of Nancy F. Ganzon dated
16 February 25, 2014.

17 12. On June 27, 2007, I executed the 1st DOT on my own behalf and on behalf of Louis J.
18 Hanson and Jacqueline M. Hanson via 2 powers of attorney. The Fraud Grant Deed and the 1st
19 DOT were recorded sequentially on July 2, 2007 as document numbers 2007000417170 and
20 2007000417171. Attached hereto and identified as Exhibit "8" is a true and correct copy of the
21 1st DOT.

22 13. On October 26, 2010, the Assignment of DOT was recorded purporting to assign the 1st
23 DOT to BONY as Trustee. The Assignment of DOT was purportedly signed by Nichole
24 Clavadetscher in her capacity as a Certifying Officer of Mers. The Assignment of DOT was
25 purported to have been notarized by Secrist, whose notary commission number is 1893949.
26 Attached hereto and identified as Exhibit "9" is a true and correct copy of the Assignment of
27 DOT.

1 14. On or about November 16, 2012, I initiated a claim with Bond Co, who provided a notary
2 bond for Secrist. Through my claim, I alleged that the signature for Nichole Clavadetscher on
3 the Assignment of DOT was not genuine and therefore, Secrist's representation on the notary
4 acknowledgement, made under penalty of perjury, that Nichole Clavadetscher personally
5 appeared before him, was false. Attached hereto and identified as Exhibit "10" is a true and
6 correct copy of a November 29, 2012 letter I received from Bond Co in response to my claim. In
7 the letter Bond Co asked me for more information to substantiate my claim. Therein, Bond Co
8 stated that it only paid actual damages (see Ex. "10", pg 1, ¶ 3) and that policy limit was
9 \$15,000.00 (see Ex. "10", pg 3).

10 15. On or about December 6, 2012, I submitted a written "Proof of Claim" to Bond Co
11 respecting my claim. Attached hereto and identified as Exhibit "11" is a true and correct copy of
12 my December 6, 2012 "Proof of Claim".

13 16. On or about February 27, 2013 (after nearly 3 month time to investigate its liability)
14 Bond Co paid me the full policy limit of \$15,000.00 in settlement of my claim. Attached hereto
15 and identified as Exhibit "12" is a true and correct copy of the \$15,000.00 check I received from
16 Bond Co in settlement of my bond claim.

17 17. On February 28, 2014, a Substitution of Trustee, purporting to substitute Quality Loan
18 Service Corporation ("Quality") as a successor trustee to the DOT Trustee was recorded.
19 Attached hereto and identified as Exhibit "13" is a true and correct copy of the Substitution of
20 Trustee.

21 18. On September 25, 2014, a Notice of Default, claiming to be a notice of default on the 1st
22 DOT was recorded. Attached hereto and identified as Exhibit "14" is a true and correct copy of

23 //

24 //

25 //

26 //

27 //

28 //

1 the Notice of Default.

2 19. On September 30, 2015, a Notice of Trustee's Sale was recorded. Attached hereto and
3 identified as Exhibit "15" is a true and correct copy of the Notice of Trustee's Sale.

4 20. On August 8, 2016, a Trustee's Sale was conducted by Quality and on August 16, 2016,
5 Quality recorded a Trustee's Deed Upon Sale. Attached hereto and identified as Exhibit "16" is
6 a true and correct copy of the Trustee's Deed Upon Sale.

7 I declare under penalty of perjury under the laws of the State of California and the United
8 States that the foregoing is true and correct. Executed at Tustin, California on October 11,
9 2017October 11, 2017.

10
11 By: _____
12 Billie Rene' Frances Lillian Powers, Declarant

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 2

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 3

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 4

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 5

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 6

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 7

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 8

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 9

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 10

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 11

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 12

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 13

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 14

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 15

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 16

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 17