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Attorneys for Defendants
WELLS FARGO BANK, N.A. dba AMERICA'S SERVICING COMPANY and U.S. BANK, N.A. AS TRUSTEE

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN MATEO

REGINA MANANTAN,

Plaintiff,

vs.

WELLS FARGO BANK, N.A., D/B/A AMERICA'S SERVICING COMPANY, U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, SUCCESSOR-IN-INTEREST TO BANK OF AMERICA, NATIONAL ASSOCIATION AS TRUSTEE, SUCCESSOR BY MERGER TO LASALLE BANK, NATIONAL ASSOCIATION, AS TRUSTEE FOR MORGAN STANLEY MORTGAGE LOAN TRUST 2007-7AX, QUALITY LOAN SERVICE CORPORATION, MOAB, INVESTMENT GROUP, LLC, and DOES 1 through 50, inclusive,

Defendants.

Case No. CIV 535902

NOTICE OF MOTION AND MOTION FOR RECONSIDERATION

[Filed concurrently with Memorandum of Points and Authorities; Request for Judicial Notice; [Proposed] Order]

Date: September 6, 2016
Time: 9:00 a.m.
Dept.: Law & Motion

Action Filed: October 20, 2015
Trial Date: None Set

TO PLAINTIFF AND HER ATTORNEY OF RECORD:

PLEASE TAKE NOTICE that on Tuesday September 6, 2016 at 9:00 a.m. in the Law and Motion Department of the above-entitled court, located at 400 County Center, Redwood City, California, defendants WELLS FARGO BANK, N.A. dba AMERICA'S SERVICING COMPANY and U.S. BANK, N.A. AS TRUSTEE (Defendants), will move the Court for an order granting reconsideration of its order overruling in part the Defendants' Demurrer to Plaintiff's Second Amended Complaint.

Defendants make this motion pursuant to Code of Civil Procedure section 1008(a) on the ground that reconsideration is warranted because there are new or different facts, circumstances, or law that Defendants could not have discovered and produced with reasonable diligence prior to the demurrer hearing in this case. Shortly after the Court issued its order on the demurrer, the California Court of Appeal issued a decision directly affecting the law at issue in this case and in contradiction with this Court's order. The new appellate decision demonstrates that reconsideration should be granted and that the Court should issue a new order sustaining Defendants' demurrer to Plaintiff's Second Amended Complaint.

The motion will be based upon this notice, the Request for Judicial Notice and Memorandum of Points and Authorities attached hereto, and such evidence and argument as presented by counsel at the hearing of the motion.

DATED: August 9, 2016

SEVERSON & WERSON
A Professional Corporation

By: _____
Brian S. Whittemore

Attorneys for Defendants
WELLS FARGO BANK, N.A. dba AMERICA'S SERVICING COMPANY and U.S. BANK, N.A. AS TRUSTEE

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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN MATEO

REGINA MANANTAN,

Plaintiff,

vs.

WELLS FARGO BANK, N.A., D/B/A AMERICA'S SERVICING COMPANY, U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, SUCCESSOR-IN-INTEREST TO BANK OF AMERICA, NATIONAL ASSOCIATION AS TRUSTEE, SUCCESSOR BY MERGER TO LASALLE BANK, NATIONAL ASSOCIATION, AS TRUSTEE FOR MORGAN STANLEY MORTGAGE LOAN TRUST 2007-7AX, QUALITY LOAN SERVICE CORPORATION, MOAB, INVESTMENT GROUP, LLC, and DOES 1 through 50, inclusive,

Defendants.

Case No. CIV 535902

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR RECONSIDERATION

[Filed concurrently with Notice of Motion and Motion; Request for Judicial Notice; [Proposed] Order]

Date: September 6, 2016
Time: 9:00 A.M.
Dept.: Law & Motion

Action Filed: October 20, 2015
Trial Date: None Set

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendants WELLS FARGO BANK, N.A. dba AMERICA'S SERVICING COMPANY and U.S. BANK, N.A. AS TRUSTEE ("Defendants") respectfully submit their motion for reconsideration of this Court's order overruling their demurrer to Plaintiff REGINA MANANTAN's ("Plaintiff") Second Amended Complaint ("SAC"). In overruling the demurrer, the Court cited with favor the *Glaski* case for the proposition that a postclosing date assignment to a securitized investment trust is void, not voidable.

However, the very day this Court issued its decision, the California Court of Appeal published a decision styled as *Yhudai v. Impac Funding Corporation, et. al.*, which rejects the *Glaski v. Bank of America* (2013) 218 Cal.App.4th 1079 case. In doing so, the *Yhudai* court provides a detailed analysis of the erosion of the New York case law upon which the *Glaski* court relied. Understanding the consderable defects with the *Glaski* decision, Defendants respectfully submit, is persuasive in illustrating why this Court should join with the *Yhudai* Court in rejecting *Glaski* even though it has not yet been overturned.

Specifically, the *Yhudai* Court notes that the *Erobobo I* opinion out of New York, upon which *Glaksi* relies, was later reversed by a higher court. *Glaski's* persuasive authority must also be called into question in light of the reversal. As explained more fully herein, Defendants urge this Court to reconsider its order on demurrer, wherein *Glaski* is cited with approval, and adopt the rationale expressed in the *Yhudai* opinion, for the reasons expressed therein and below.

II. PERTINENT FACTS

Defendants' demurrer to Plaintiff's SAC was originally set for hearing on July 8, 2016. Defendants contested the Court's tentative ruling and, because not all parties appeared at the hearing, the Court continued the hearing to July 15, 2015 for oral argument.

Upon completion of oral argument, the Court continued the demurrer to July 29, 2016, whereupon the Court issued an order overruling Defendants' demurrer to the SAC in part.

That same day, the California Court of Appeal for the Second Appellate District issued the *Yhudai* opinion, an opinion highly critical of the *Glaski* case, cited with favor by this Court in its

order on demurrer.

III. LEGAL ARGUMENT

A. Reconsideration Should Be Granted

"Any party affected" by a court's order on a motion or application may move for reconsideration. (Code Civ. Proc., § 1008(a).) The motion may be granted "if the party moving for reconsideration can offer 'new or different facts, circumstances, or law' which it could not, with reasonable diligence, have discovered and produced at the time of the prior motion." (*Forrest v. State Of California Dep't Of Corporations* (2007) 150 Cal.App.4th 183, 202, disapproved of on another ground by *Shalant v. Girardi* (2011) 51 Cal.4th 1164 (citations omitted).) Reconsideration should be granted here as a new appellate decision, *Yhudai v. Impac Funding Corporation, et. al.* was issued on July 29, 2016, shortly after this Court issued its ruling on demurrer. As a result, Defendants were unable to present the *Yhudai* holding, and its considered decision rejecting *Glaski*, to this Court in support of the demurrer to Planitiff's SAC.

Reconsideration is appropriate where a party presents new or different evidence it was unable to present before the Court's prior decision. (See *In re Marriage of La Moure* (2013) 221 Cal.App.4th 1463, 1473 (affirming granting of motion for reconsideration based on introduction of new evidence); *Hollister v. Benzl* (1999) 71 Cal.App.4th 582, 585 (same).) "To be entitled to reconsideration, a party should show that (1) evidence of new or different facts exist, and (2) the party has a satisfactory explanation for failing to produce such evidence at an earlier time." (*Kalivas v. Barry Controls Corp.* (1996) 49 Cal.App.4th 1152, 1160-1161.) Here, the new law cited in this motion was issued after the Court issued its ruling on demurrer. Accordingly, Defendants were unable to cite to the law, which directly affects the case at issue, or present the Court with relevant argument concerning the holding set forth in the *Yhudai* opinion.

B. The Court should Follow *Yhudai's* Reasoning and Decline to Follow *Glaski*

1. Standard re Stare Decisis – I.e., When Two Court of Appeal Decisions Conflict

Because there are now conflicting court of appeal decisions on point, this Court may choose to follow either *Glaski* or the contrary position represented by *Yhudai v. Impac Funding Corp.* (See *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 456 ["the rule under

discussion [stare decisis] has no application where there is more than one appellate court decision, and such appellate decisions are in conflict. In such a situation, the court exercising inferior jurisdiction can and must make a choice between the conflicting decisions."]; *McCallum v. McCallum* (1987) 190 Cal.App.3d 308, 315, fn. 4.)

2. *Yhudai* is the Better Rule

In its order overruling Defendants' demurrer, in part, this Court reasoned, in pertinent part, as follows:

> 1. "Tender is not required where the foreclosure sale is void, rather than voidable, such as when a plaintiff proves that the entity lacked the authority to foreclose." *Glaski v. Bank of America* (2013) 218 Cal. App. 4th 1079, 1100. (RJN, Ex. 1.)
>
> 2. Although *Saterbak v. JP Morgan Chase Bank* (2016) 245 Cal.App.4th 808 concludes that an untimely assignment to a securitized trust made after the trust's closing date is voidable only, the *Saterbak* case is a preforclosure case, unlike the case at bar. The court finds that the *Glaski* case is controlling and more persuasive. Although the case relied upon by *Glaski* (Rajamin) has been called into question, the Glaski case itself has not yet been overruled. (RJN, Ex. 1.)

Thus, by its Order, the Court reasoned *Glaski* was more persuasive because (1) *Saterbak* involved a pre-foreclosure factual scenario, and (2) because *Glaski* has not yet been overruled outright. Defendants respectfully submit that *Yhudai* calls into question the rationale underpinning this Court's order on demurrer.

The *Yhudai v. Impac Funding Corp.* opinion (see, RJN, Ex. 2.), cited by Defendants as the basis for reconsideration, also involves a post-foreclosure scenario, as does the case at bar. Moreover, as in the instant case, *Yhudai* alleged that:

> "[m]ore than two years after the ISA Trust's closing date, MERS, as nominee for Impac Funding, recorded an "Assignment of Deed of Trust," purporting to assign to Deutsche Bank, as trustee of the ISA Trust, "[a]ll beneficial interest" under the deed of trust "together with the Promissory Note secured by said Deed of Trust" (the 2009 Assignment). (*Yhudai*, supra, at pg 2-3.)[1]

Moshe Yhudai, like Plaintiff in this case, alleged that the 2009 assignment was void because it occurred after the ISA Trust's closing date, and that Deutsche Bank's and ReconTrust's

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[1] At the time of filing, the At the time of filing, the *Yhudai* case was not yet available on Westlaw for citation. Accordingly, Defendants attach a true and correct copy of the opinion in their request for judicial notice filed herewith. Citation to specific page numbers reference the opinion attached as Exhibit 2 to Defendants' request for judicial notice.

actions, including the trustee's sale, are void because they are derived from the void 2009 assignment. (*Id.* at pg. 3.) The trial court sustained defendants' demurrer to the entire pleading without leave to amend. (*Id.*)

The *Yhudai* Court discussed the California Supreme Court's *Yvanova* opinion, where the plaintiff likewise alleged that the assignment of the deed of trust into the investment trust was void because it occurred after the investment trust's closing date. (*Yvanova v. New Century Mortgage Corp.* (2016) 62 Cal.4th 919, 925.) The Supreme Court held that the plaintiff could state a cause of action for wrongful foreclosure if the assignment of the deed of trust "was void, and not merely voidable at the behest of the parties to the assignment. (*Id.* at 923.)

When an assignment is merely voidable, however, the power to ratify or avoid the transaction lies solely with the parties to the assignment; the transaction is not void unless and until one of the parties steps in to make is so. (*Yvanova, supra,* 62 Cal.4th at 936.) As the *Yhudai* court observed, "[s]ignificantly, ***Yvanova did not consider or decide whether the assignment of the plaintiff's deed of trust to the investment trust after the trust's closing date rendered the assignment void, and not merely voidable***; that question was a matter to be determined after remand. (*Yhudai, supra, at* pg. 5; *citing*, *Yvanova, supra*, 62 Cal.4th at 936 & 942.)

In its order on demurrer, this Court cited *Glaski* with favor indicating it had not yet been overruled. (RJN, Ex. 1.) However, Defendants submit that *Yhudai's* critique of the outlier *Glaski* opinion is persuasive and therefore urge the Court to reconsider its order on demurrer, taking into account the *Yhudai* Court's reasoning.

C. The Court Should Reject *Glaski* Based on the *Yhudai* Court's Rationale

While Defendants acknowledge *Glaski* has not yet been overturned, it has nevertheless been eroded significantly. The *Yhudai* Court's rationale for rejecting *Glaski* is persuasive and Defendants urge this Court to adopt it.

As explained in *Yhudai,* the *Glaski* Court relied on a then-recent decision by a New York trial court, *Wells Fargo Bank, N.A. v. Erobobo* (N.Y. Sup. Ct. 2013) 39 Misc.3d 1220(A) (*Erobobo I)*, which involved a mortgage that had been transferred to an investment trust after the trust closing date. (*Yhudai, supra, at* pg 6.) The *Erobobo I* court stated that "the acceptance of the

note and mortgage by the trustee after the date the trust closed, would be void. (*Glaski, supra,* at 1097, quoting *Erobobo I, supra,* 2013 WL 1831799 at *8.)

Based on *Erobobo I* and a bankruptcy court decision that followed *Erobobo I* (*In re Saldivar* (Bankr. S.D. Tex. June 5, 2013, No. 11-10689) 2013 WL 2452699), *Glaski* concluded that the plaintiff's "factual allegations regarding [the] postclosing date attempts to transfer his deed of trust into the [investment trust] are sufficient to state a basis for concluding the attempted transfers were void." (*Glaski, supra,* 218 Cal.App.4th at 1097.)

However, ***after Glaski was decided***, a New York intermediate appellate court ***reversed Erobobo I***. (*Yhudai, supra,* at pg. 7; *citing, Wells Fargo Bank, N.A. v. Erobobo* (N.Y. App.Div. 2015) 127 A.D.3d 1176, 1178 (*Erobobo II.*).) As explained in *Yhudai:*

> In rejecting the trial court's view of New York law, the higher court explained that the borrower in that case, "as a mortgagor whose loan is owned by a trust, does not have standing to challenge the [mortgage assignee's] possession or status as assignee of the note and mortgage based on purported noncompliance with certain provisions of the [trust's PSA]. (*Yhudai, supra, at* pg.7*; citing, Erobobo II; supra,* at 1178.) The trustee of the investment trust in that case was thus entitled to summary judgment on its action to foreclose the mortgage. (*Id.*)

Subsequent cases, both in California and in other circuits, have consistently rejected *Erobobo I,* the now overturned case upon which the *Glaski* Court relied.[2] As explained in *Yhudai*, the rejection of *Erobobo I* (and by extension, *Glaski*) is based on sound reasoning:

> Under New York law, unauthorized acts by trustees may generally be approved, or ratified, by the trust beneficiaries. (*Rajamin, supra,* 757 F.3d at 88.; *Mooney v. Madden* (N.Y. App. Div. 1993) 193 A.D. 2d 933, 934.) Under *Erobobo I,*

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[2] Subsequent cases have consistently rejected *Erobobo I.* (See, e.g., *In re Jepson* (7th Cir. 2016) 816 F.3d 942, 947 ["New York courts consistently have held that an assignment that fails to comply with the terms of a trust agreement merely is voidable and *not* void"]; *Cocroft v. HSBC Bank USA, N.A.* (7th Cir. 2015) 796 F.3d 680, 690 (*Cocroft*) [rejecting borrower's reliance on *Erobobo I* in light of reversal in *Erobobo II*]; *Ferguson v. Bank of New York Mellon Corp.* (5th Cir. 2015) 802 F.3d 777, 782-783 [based on *Erobobo II*, court construed New York law such that violation of a PSA would render challenged assignment of deed of trust "at most voidable but not void"]; *Rajamin v. Deutsche Bank Nat. Trust Co.* (2d Cir. 2014) 757 F.3d 79, 90 (*Rajamin*) [under New York law, unauthorized acts of trustee of investment trust were "not void but voidable"]; *Butler v. Deutsche Bank Trust Co. Americas* (1st Cir. 2014) 748 F.3d 28, 37, fn. 8 [even before *Erobobo II*, "the vast majority of courts to consider the issue have rejected *Erobobo's* [*I*] reasoning, determining that . . . the acts of a trustee in contravention of a trust may be ratified, and are thus voidable"].) *Saldivar, supra*, the bankruptcy court case *Glaski* cited, has received similar negative treatment. (See *Berezovskaya v. Deutsche Bank Nat. Trust Co.* (E.D.N.Y. Aug. 1, 2014, No. 12 CV 6055(KAM)) 2014 WL 4471560 at *6-7; *Koufos v. U.S. Bank, N.A.* (D.Mass. 2013) 939 F.Supp.2d 40, 57, fn. 2; *In re Stanworth* (Bankr. E.D.Va. 2016) 543 B.R. 760, 777.)

> however, a stranger to the trust would have standing to assert that the unauthorized transaction is void, thereby giving "the stranger…the power to interfere with the beneficiaries' right of ratification." (*Rajamin, supra,* at 89.) The stranger's right (under *Erobobo I)* to declare a transaction void would thus conflict directly with the beneficiaries' right to ratify the transaction. (*Yhudai, supra,* at pg. 8.)

"This conflict is avoided by rejecting *Erobobo I*: Because a trust beneficiary under New York law 'retains the authority to ratify a trustee's *ultra vires* act, such as a late transfer[,]…the act…must not be void; it must merely be voidable." (*Id.*)

The *Yhudai* Court concludes: "[b]ecause the decision upon which *Glaski* relied for its understanding of New York law has not only been reversed, but soundly and overwhelmingly rejected, we decline to follow *Glaski* on this point." (*Id. at* pg. 8; *citing, Saterbak v. JP Morgan Bank, N.A.* (2016) 245 Cal.App.4th 808, 815, fn. 5.)

Based on the forgoing, the *Yhudai* Court held that "…a postclosing assignment of a loan to an investment trust that violates the terms of the trust renders the assignment voidable, not void, under New York law. (*Id. at* pg. 8*; citing, Morgan v. Aurora Loan Services, LLC* (9th Cir. Mar. 28, 2016, No. 14-55203).) The holding in *Yvanova* was purposely and expressly limited in stating that borrowers have standing to challenge assignments as void, but not as voidable. (*Yvanova, supra,* 62 Cal.4th at 939.)

Where an assignment is merely voidable, California Courts have reasoned that a Plaintiff lacks standing to challenge an alleged defect in the assignment. (*Saterbak v. JPMorgan Chase Bank, N.A.* (2016) 245 Cal.App.4th 808, 815.) Here, this Court should also determine Plaintiff's challenge to the assignment in question as voidable – not void - and, in doing so, rule that Plaintiff lacks standing to pursue claims grounded in alleged securitization defects.

Based on the foregoing, Defendants respectfully request this Court take into consideration the recent appellate decision and reconsider its ruling on demurrer.

IV. CONCLUSION

Reconciling *Yvanova's* limited holding with *Yhudai's* more comprehensive analysis, this Court should properly hold Plaintiff's trust closing date theory merely renders the assignment voidable (not void). The result being that Plaintiff lacks standing to challenge the securitization of the loan under the trust closing date theory alleged in the SAC. Adopting the *Yhudai* reasoning,

this Court should also sustain Defendants' demurrer to the SAC.

DATED: August 9, 2016

SEVERSON & WERSON
A Professional Corporation

By: _____
Brian S. Whittemore

Attorneys for Defendants
WELLS FARGO BANK, N.A. dba AMERICA'S SERVICING COMPANY and U.S. BANK, N.A. AS TRUSTEE

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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN MATEO

REGINA MANANTAN,

Plaintiff,

vs.

WELLS FARGO BANK, N.A., D/B/A AMERICA'S SERVICING COMPANY, U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, SUCCESSOR-IN-INTEREST TO BANK OF AMERICA, NATIONAL ASSOCIATION AS TRUSTEE, SUCCESSOR BY MERGER TO LASALLE BANK, NATIONAL ASSOCIATION, AS TRUSTEE FOR MORGAN STANLEY MORTGAGE LOAN TRUST 2007-7AX, QUALITY LOAN SERVICE CORPORATION, MOAB, INVESTMENT GROUP, LLC, and DOES 1 through 50, inclusive,

Defendants.

Case No. CIV 535902

REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF MOTION FOR RECONSIDERATION

[Filed concurrently with Notice of Motion and Motion; Memorandum of Points and Authorities; [Proposed] Order]

Date: September 6, 2016
Time: 9:00 a.m.
Dept.: Law & Motion

Action Filed: October 20, 2015
Trial Date: None Set

Pursuant to Evidence Code section 452(h), which allows the court to take judicial notice of "[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy," defendants WELLS FARGO BANK, N.A. dba AMERICA'S SERVICING COMPANY and U.S. BANK, N.A. AS TRUSTEE ("Defendants") request that the Court take judicial notice of the following documents, because they are official public records, duly recorded in the courts records, the contents and authenticity of which "cannot be reasonably controverted." (See *Evans v. California Trailer Court, Inc.* (1994) 28 Cal.App.4th 540, 549 ("[t]he court may take judicial notice of recorded deeds")).

Exhibit 1: The Court's order overruling in part Defendants' demurrer to Plaintiff's Second Amended Complaint. A true and correct copy of said document is attached hereto as Exhibit 1.

Exhibit 2: The Second Appellate District's opinion in *Moshe Yhudai v. Impac Funding Corporation, et al.* published on July 29, 2016. A true and correct copy of said document is attached hereto as Exhibit 2.

DATED: August 9, 2016

SEVERSON & WERSON
A Professional Corporation

By: _____
Brian S. Whittemore

Attorneys for Defendants
WELLS FARGO BANK, N.A. dba AMERICA'S SERVICING COMPANY and U.S. BANK, N.A. AS TRUSTEE

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EXHIBIT 1

9:00
LINE 8
CIV 535902
REGINA MANANTAN VS. WELLS FARGO BANK, N.A., ET AL

REGINA MANANTAN
TIMOTHY L. MCCANDLESS

WELLS FARGO BANK, N.A.
BRIAN S. WHITTEMORE

DEMURRER TO SECOND AMENDED COMPLAINT OF MANANTAN BY WELLS FARGO BANK, N.A.
NOTE: This Court did not request further briefing, so it did not review Plaintiff's "Sur-Reply" or Defendants' Reply to the Sur-Reply.
TENTATIVE RULING:

Defendants Wells Fargo Bank, N.A. DBA America's Servicing Company and U.S. Bank, N.A., as Trustee, successor-in-interest to Bank of America, National Association as Trustee, successor by merger to LaSalle Bank, National Association as Trustee for Morgan Stanley Mortgage Loan Trust 2007-7AX's Demurrer to Plaintiff's Second Amended Complaint is OVERRULED as to cause of action nos. 1, 2, 3, 4, 6 and 8. The Demurrer is SUSTAINED with leave to amend as to cause of action no. 5 and SUSTAINED without leave to amend to cause of action no. 7.

For purposes of the demurrer, all material facts in the pleadings are assumed to be true. Ellenberger v. Espinosa (2004) 30 Cal. App. 4th 943, 947. However, the deductions or conclusions of fact or law are not accepted as true. Blank v. Kirwan (1985) 39 Cal. 3d 311, 318. A demurrer can be used to challenge defects that appear on the face of the pleading under attack or from matters outside the pleadings that are judicially noticeable. Ibid.

The Second Amended Complaint sufficiently pleaded facts to support the first, second, third, fourth, sixth and eighth causes of action for breach of security instrument, wrongful foreclosure, fraud, unfair business practices, setting aside Trustee's sale and quiet title, respectively.

"Tender is not required where the foreclosure sale is void, rather than voidable, such as when a plaintiff proves that the entity lacked the authority to foreclose." Glaski v. Bank of America (2013) 218 Cal. App. 4th 1079, 1100.

The recent California Supreme Court decision in Yvanova v. New Century Mortg. Corp. (2016) 62 Cal. 4th 919 gives the Plaintiff standing to sue based on questionable transfers in the chain of title of the Deed of Trust and recognizes that the borrower can be damaged by not knowing who holds the Deed of Trust for his/her house.

The Plaintiff has standing to sue under Yvanova v. New Century Mortg. Corp. (2016) 62 Cal. 4th 919, which decided, "A homeowner who has been foreclosed on by one with no right to do so

has suffered an injurious invasion of his or her legal rights at the foreclosing entity's hands. No more is required for standing to sue." 62 Cal. 4th at 939.

The Yvanova court ruled that only the entity holding the beneficial interest under the deed of trust may instruct the trustee to commence a nonjudicial foreclosure. 62 Cal. 4th at 935. If a purported assignment necessary to the chain by which the foreclosing entity claims that power is absolutely void, meaning of no legal force or effect whatsoever, the foreclosing entity has acted without legal authority by pursuing a trustee's sale, and such an unauthorized sale constitutes a wrongful foreclosure. Ibid.

Although Saterbak v. JP Morgan Chase Bank (2016) 245 Cal. App. 4th 808 concludes that an untimely assignment to a securitized trust made after the trust's closing date is voidable only, the Saterbak case is a preforclosure case, unlike the case at bar. The court finds that the Glaski case is controlling and more persuasive. Although the case relied upon by Glaski (Rajamin) has been called into question, the Glaski case itself has not yet been overruled.

The Second Amended Complaint did not sufficiently plead facts to support the fifth and seventh causes of action for intentional infliction of emotional distress and slander of title, respectively.

With regard to the fifth cause of action for intentional infliction of emotional distress, the Second Amended Complaint does not contain sufficient allegations that anyone "intended" to cause or "acted with reckless disregard of the probability of causing" emotional distress to Plaintiff. There is no mention of severe emotional damages such as sleeplessness, anxiety, depression or the like. Plaintiff is granted leave to amend this cause of action.

With regard to the seventh cause of action for slander of title, the Second Amended Complaint fails to state a cause of action because all of the actions complained of are protected by the litigation privilege found at Civil Code secs. 47 and 2924(b).

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to CRC Rule 3.1308(a)(1), adopted by Local Rule 3.10. If the tentative ruling is uncontested, plaintiff is directed to prepare, circulate and submit a written order reflecting this Court's ruling verbatim for the Court's signature, consistent with the requirements of CRC Rule 3.1312. The proposed order is to be submitted directly to Judge Jonathan E. Karesh, Department 20.

Severson
&Werson
A Professional Corporation

EXHIBIT 2

Filed 7/29/16

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

MOSHE YHUDAI, Plaintiff and Appellant, v. IMPAC FUNDING CORPORATION, et al., Defendants and Respondents.	B262509 (Los Angeles County Super. Ct. No. BC495503)

APPEAL from a judgment of the Superior Court of Los Angeles County, Mel Red Recana, Judge. Affirmed.

Richard L. Antognini for Plaintiff and Appellant.

Reed Smith, Michael Gerst, Kasey J. Curtis, and Elena Gekker for Defendants and Respondents.

Appellant Moshe Yhudai sued his lender and other parties alleging causes of action arising from the nonjudicial foreclosure sale of his residence. The trial court sustained the respondents' demurrer to Yhudai's second amended complaint without leave to amend and entered a judgment dismissing the case with prejudice.[1] Yhudai appealed. We affirm.

FACTUAL AND PROCEDURAL SUMMARY

Yhudai owned a residence in Los Angeles. In February 2007 he borrowed $1,802,500 from Impac Funding, and secured the loan with a deed of trust against the residence. Impac Funding is named as the "lender" and MERS as the "beneficiary." The deed of trust provides that (1) MERS "is acting solely as a nominee for Lender and Lender's successors and assigns" and (2) Yhudai's promissory note, together with the deed of trust, "can be sold one or more times without prior notice to [Yhudai]."

On March 29, 2007, Impac Funding sold Yhudai's promissory note and other promissory notes to a certain securitized investment trust (the ISA Trust). Deutsche Bank is the trustee of the ISA Trust, which was formed under New York law pursuant to a pooling and service agreement (PSA).[2] Under the PSA, in order for a loan to be included in the ISA Trust, it must be transferred into the trust by the "closing date" of March 29, 2007.

More than two years after the ISA Trust's closing date, MERS, as nominee for Impac Funding, recorded an "Assignment of Deed of Trust," purporting to assign to Deutsche Bank, as trustee of the ISA Trust, "[a]ll beneficial interest" under the deed of trust "together with the Promissory Note secured by said Deed of Trust" (the 2009

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[1] Respondents are IMPAC Funding Corporation (Impac Funding), Mortgage Electronic Registration Systems, Inc. (MERS), Deutsche Bank National Trust Company (Deutsche Bank), as Trustee Under the PSA Relating to IMPAC Secured Assets Corp., Mortgage Pass-Through Certificates, Series 2007-02, and Bank of America, N.A.

[2] A securitized investment trust is created by pooling the loans into a trust and selling to investors the right to receive the mortgage interest and principal payments. (*Yvanova v. New Century Mortgage Corp.* (2016) 62 Cal.4th 919, 930, fn. 5 (*Yvanova*).) Terms of the trusts and the rights and obligations of the parties are set forth in a pooling and service agreement. (*Ibid.*)

assignment). The 2009 assignment is dated August 31, 2009, signed on October 15, 2009, and recorded in Los Angeles County on October 22, 2009.

On February 22, 2012, Deutsche Bank, as trustee for the ISA Trust, recorded a substitution of trustee naming ReconTrust Company, N.A. (ReconTrust) the trustee under the deed of trust. The same day, ReconTrust recorded a notice of default and election to sell the property pursuant to the deed of trust. About three months later, ReconTrust recorded a notice of trustee's sale. On June 15, 2012, ReconTrust conducted a trustee's sale and sold the property to Deutsche Bank, as trustee for the ISA Trust.

In his second amended complaint, Yhudai alleged that the 2009 assignment is void because it occurred after the ISA Trust's closing date, and that Deutsche Bank's and ReconTrust's actions, including the trustee's sale, are void because they are derived from the void 2009 assignment.[3] He asserted causes of action for: (1) negligent misrepresentation; (2) slander of title; (3) fraud; (4) quiet title; (5) declaratory and injunctive relief; and (6) violation of Business and Professions Code section 17200. Yhudai sought damages and equitable relief, including orders nullifying and rescinding the foreclosure sale, cancellation of the notice of default and notice of trustee's sale, and a judgment quieting his title to the property. The trial court sustained the respondents' demurrer to the entire pleading without leave to amend, and thereafter entered a judgment of dismissal. Yhudai appealed.

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[3] Yhudai also alleged that the person who signed the 2009 assignment on behalf of MERS was actually an employee of Bank of America, and that the February 2012 substitution of trustee was forged or "robo-sign[ed]," and therefore invalid. He further alleged that respondents violated the terms of an agreement, or "Consent Judgment," entered into with the United States requiring respondents to offer and facilitate loan modifications to avoid foreclosure, and that respondents failed to comply with that agreement. On appeal, however, Yhudai makes no argument concerning these allegations and represents that his claims depend upon his allegation that the 2009 assignment is void. Based on that representation and the absence of relevant arguments, we do not consider these additional allegations.

DISCUSSION

I. *Standard Of Review*

On appeal from a judgment after the court sustains a general demurrer without leave to amend, "we determine whether the complaint states facts sufficient to constitute a cause of action." (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) " 'We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which may be judicially noticed.' [Citation.] Further, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. [Citation.]" (*Ibid.*) When the demurrer is sustained without leave to amend, we reverse if "there is a reasonable possibility that the defect can be cured by amendment." (*Ibid.*)

II. *Yhudai's Contention That The 2009 Assignment Is Void.*

In Yhudai's opening brief on appeal, he acknowledged that the viability of his claims, as well as a proposed new cause of action for "wrongful foreclosure," "turns on his ability to challenge" the 2009 assignment. This challenge is based solely on the premise that the 2009 assignment is void because it occurred after the ISA Trust's closing date, as established in the PSA.

Our Supreme Court addressed a similar contention in *Yvanova*, *supra*, 62 Cal.4th 919.[4] In that case, the plaintiff secured a loan with a deed of trust against her property. As in the present case, the loan was sold to Deutsche Bank, as trustee for an investment trust. (*Id.* at pp. 925-926.) Under the terms of that trust, the closing date for the transfer of loans and trust deeds into the trust was January 27, 2007. (*Id.* at p. 925.) Almost five years after that date, in December 2011, the plaintiff's lender executed an assignment of the deed of trust to Deutsche Bank, as trustee of the investment trust. Deutsche Bank then caused the plaintiff's property to be sold at a foreclosure sale. (*Id.* at pp. 924-925.)

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[4] *Yvanova* was decided after the respondents filed their initial brief on appeal. Yhudai discusses and relies on *Yvanova* in his reply brief. We gave respondents the opportunity to address the effect of *Yvanova* on this case and they filed a supplemental brief in response.

The plaintiff in *Yvanova* alleged that the assignment of her deed of trust into the investment trust was void because it occurred after the investment trust's closing date. (*Yvanova, supra*, 62 Cal.4th at p. 925.) The trial court sustained a demurrer to the complaint, and this court affirmed. The Supreme Court reversed, and held that the plaintiff could state a cause of action for wrongful foreclosure if the assignment of the deed of trust "was void, and not merely voidable at the behest of the parties to the assignment." (*Id.* at p. 923.) The court explained that "only the entity holding the beneficial interest under the deed of trust—the original lender, its assignee, or an agent of one of these—may instruct the trustee to commence and complete a nonjudicial foreclosure. [Citations.] If a purported assignment necessary to the chain by which the foreclosing entity claims that power is absolutely void, meaning of no legal force or effect whatsoever [citations], the foreclosing entity has acted without legal authority by pursuing a trustee's sale, and such an unauthorized sale constitutes a wrongful foreclosure." (*Id.* at p. 935; see *Sciarratta v. U.S. Bank National Assn.* (2016) 247 Cal.App.4th 552, 564.)

An assignment that is merely *voidable*, by contrast, does not support a wrongful foreclosure action. "California law," the *Yvanova* court explained, "does not give a party personal standing to assert rights or interests belonging solely to others. [Citations.] When an assignment is merely voidable, the power to ratify or avoid the transaction lies solely with the parties to the assignment; the transaction is not void unless and until one of the parties takes steps to make it so. A borrower who challenges a foreclosure on the ground that an assignment to the foreclosing party bore defects rendering it voidable could thus be said to assert an interest belonging solely to the parties to the assignment rather than to herself." (*Yvanova, supra*, 62 Cal.4th at p. 936; see also *Glaski v. Bank of America* (2013) 218 Cal.App.4th 1079, 1094-1095 (*Glaski*).) Yhudai is such a borrower.

Significantly, *Yvanova* did not consider or decide whether the assignment of the plaintiff's deed of trust to the investment trust after the trust's closing date rendered the assignment void, and not merely voidable; that question was a matter to be determined after remand. (*Yvanova, supra*, 62 Cal.4th at pp. 936 & 942.)

In his second amended complaint, Yhudai alleged that the 2009 assignment is void under New York law (which he alleged governs the ISA Trust) because it occurred after the closing date specified in the PSA. He asserts that, under *Yvanova*, this allegation is enough to survive the demurrer. We disagree. Although we must accept the truth of Yhudai's *factual* allegations when reviewing the ruling on a demurrer, we are not required to accept the truth of his legal conclusions. (See *Yvanova*, *supra*, 62 Cal.4th at p. 925; *Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1126.)

In opposition to the demurrer, Yhudai relied on *Glaski*, *supra*, 218 Cal.App.4th 1079, to support his assertion that the 2009 assignment is void. In *Glaski*, the plaintiff's loan was pooled with other loans and transferred to an investment trust formed under New York law. (*Id.* at pp. 1083-1084.) Like Yhudai, the plaintiff alleged that a purported assignment of his note and deed of trust to the investment trust was ineffective because the assignment was made after the trust's closing date. (*Id.* at p. 1084.) To determine whether there was "a legal basis for concluding that the trustee's attempt to accept a loan after the closing date would be void as an act in contravention of the trust document" (*id.* at p. 1096), the Court of Appeal looked to a New York statute, which provides: " 'If the trust is expressed in an instrument creating the estate of the trustee, every sale, conveyance or other act of the trustee in contravention of the trust . . . is void.' " (*Ibid.*, quoting N.Y. Est. Powers & Trusts Law § 7–2.4.) In applying this statute, the court relied on a then-recent decision by a New York trial court, *Wells Fargo Bank, N.A. v. Erobobo* (N.Y.Sup.Ct. 2013) 39 Misc.3d 1220(A) [2013 WL 1831799] (*Erobobo I*), which involved a mortgage that had been transferred to an investment trust after the trust closing date. The *Erobobo I* court stated that " 'the acceptance of the note and mortgage by the trustee after the date the trust closed, would be void.' [Citations.]" (*Glaski*, *supra*, at p. 1097, quoting *Erobobo I*, *supra*, 2013 WL 1831799 at *8.)

Based on *Erobobo I* and a bankruptcy court decision that followed *Erobobo I* (*In re Saldivar* (Bankr. S.D.Tex. June 5, 2013, No. 11-10689) 2013 WL 2452699 (*Saldivar*)), *Glaski* concluded that the plaintiff's "factual allegations regarding [the] postclosing date attempts to transfer his deed of trust into the [investment trust] are

sufficient to state a basis for concluding the attempted transfers were void." (*Glaski, supra*, 218 Cal.App.4th at p. 1097.)

After *Glaski* was decided, a New York intermediate appellate court reversed *Erobobo I.* (*Wells Fargo Bank, N.A. v. Erobobo* (N.Y.App.Div. 2015) 127 A.D.3d 1176, 1178 (*Erobobo II*).) In rejecting the trial court's view of New York law, the higher court explained that the borrower in that case, "as a mortgagor whose loan is owned by a trust, does not have standing to challenge the [mortgage assignee's] possession or status as assignee of the note and mortgage based on purported noncompliance with certain provisions of the [trust's PSA]." (*Ibid.*) The trustee of the investment trust in that case was thus entitled to summary judgment on its action to foreclose the mortgage. (*Ibid.*)

Subsequent cases have consistently rejected *Erobobo I.* (See, e.g., *In re Jepson* (7th Cir. 2016) 816 F.3d 942, 947 ["New York courts consistently have held that an assignment that fails to comply with the terms of a trust agreement merely is voidable and *not* void"]; *Cocroft v. HSBC Bank USA, N.A.* (7th Cir. 2015) 796 F.3d 680, 690 (*Cocroft*) [rejecting borrower's reliance on *Erobobo I* in light of reversal in *Erobobo II*]; *Ferguson v. Bank of New York Mellon Corp.* (5th Cir. 2015) 802 F.3d 777, 782-783 [based on *Erobobo II*, court construed New York law such that violation of a PSA would render challenged assignment of deed of trust "at most voidable but not void"]; *Rajamin v. Deutsche Bank Nat. Trust Co.* (2d Cir. 2014) 757 F.3d 79, 90 (*Rajamin*) [under New York law, unauthorized acts of trustee of investment trust were "not void but voidable"]; *Butler v. Deutsche Bank Trust Co. Americas* (1st Cir. 2014) 748 F.3d 28, 37, fn. 8 [even before *Erobobo II*, "the vast majority of courts to consider the issue have rejected *Erobobo's* [*I*] reasoning, determining that . . . the acts of a trustee in contravention of a trust may be ratified, and are thus voidable"].) *Saldivar, supra*, the bankruptcy court case *Glaski* cited, has received similar negative treatment. (See *Berezovskaya v. Deutsche Bank Nat. Trust Co.* (E.D.N.Y. Aug. 1, 2014, No. 12 CV 6055(KAM)) 2014 WL 4471560 at *6-7; *Koufos v. U.S. Bank, N.A.* (D.Mass. 2013) 939 F.Supp.2d 40, 57, fn. 2; *In re Stanworth* (Bankr. E.D.Va. 2016) 543 B.R. 760, 777.)

The rejection of *Erobobo I* is based on sound reasoning. Under New York law, unauthorized acts by trustees may generally be approved, or ratified, by the trust beneficiaries. (*Rajamin*, *supra*, 757 F.3d at p. 88; *Mooney v. Madden* (N.Y.App.Div. 1993) 193 A.D.2d 933, 934.) Under *Erobobo I*, however, a stranger to the trust would have standing to assert that the unauthorized transaction is void, thereby giving "the stranger . . . the power to interfere with the beneficiaries' right of ratification." (*Rajamin*, *supra*, at p. 89.) The stranger's right (under *Eroboba I*) to declare a transaction void would thus conflict directly with the beneficiaries' right to ratify the transaction. This conflict is avoided by rejecting *Erobobo I*: Because a trust beneficiary under New York law "retains the authority to ratify a trustee's *ultra vires* act, such as a late transfer[,] . . . the act . . . must not be void; it must merely be voidable." (*Cocroft*, *supra*, 796 F.3d at p. 689.)

Because the decision upon which *Glaski* relied for its understanding of New York law has not only been reversed, but soundly and overwhelmingly rejected, we decline to follow *Glaski* on this point. (See *Saterbak v. JPMorgan Chase Bank, N.A.* (2016) 245 Cal.App.4th 808, 815, fn. 5 (*Saterbak*) [rejecting *Glaski* because "the New York case upon which *Glaski* relied has been overturned"].)[5] Yhudai offers no other authority for his contention. Based on the authorities cited above indicate, a postclosing assignment of a loan to an investment trust that violates the terms of the trust renders the assignment voidable, not void, under New York law. (See also *Morgan v. Aurora Loan Services, LLC* (9th Cir. Mar. 28, 2016, No. 14-55203) 2016 WL 1179733 at *2 ["an act in violation of a trust agreement is voidable—not void—under New York law"].)

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[5] Our Supreme Court's decision in *Yvanova* approved of *Glaski*'s holding that a plaintiff has standing to assert a cause of action for wrongful foreclosure when "a purported assignment necessary to the chain by which the foreclosing entity claims that power is absolutely void." (*Yvanova*, *supra*, 62 Cal.4th at p. 935.) The Court stated, however, that *Glaski*'s further holding that the assignment of a deed of trust to an investment trust was void because it occurred after the investment trust's closing date was "not before" the Court, and it "express[ed] no opinion as to *Glaski*'s correctness on the point." (*Id.* at pp. 931 & 941.)

The reversal of *Erobobo I* and the judicial response to it occurred after Yhudai filed his second amended complaint and his opposition to the demurrer. Yhudai now contends that New York law is "irrelevant" and "has no role in this case." He points to a choice of law clause in the deed of trust, which provides that the deed of trust is "governed by federal law and the law of the jurisdiction where the property is located," i.e., California.[6] Even if this clause governed the question whether the assignment is void, Yhudai offered no citation to federal or California authority (other than *Glaski*) to support his assertion that the 2009 assignment is void because it was made after the ISA Trust's closing date. We therefore reject it. (See *Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956 [arguments made without "reasoned argument and citations to authority" may be treated as waived].)

Yhudai also contends that he should not have to prove that the 2009 assignment is void; the respondents, he argues, should bear the burden of proving the validity of the 2009 assignment. He cites to cases in which a plaintiff purporting to be the assignee of a contract right had the burden of proving it actually held the contractual right it was suing to enforce. (See, e.g., *Cockerell v. Title Ins. & Trust Co.* (1954) 42 Cal.2d 284, 292; *Neptune Society Corp. v. Longanecker* (1987) 194 Cal.App.3d 1233, 1242.) Here, however, Deutsche Bank has sued no one. Yhudai, as the plaintiff challenging a nonjudicial foreclosure, has the burden to prove it was wrongful. (See *Saterbak*,

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[6] California law does not support Yhudai's claim. As *Yvanova* stated, "[t]he deed of trust . . . is inseparable from the note it secures, and follows it even without a separate assignment." (*Yvanova*, *supra*, 62 Cal.4th at p. 927; see Civ. Code, § 2936 ["The assignment of a debt secured by mortgage carries with it the security"].) Thus, if the note was timely conveyed to the ISA Trust, as Yhudai alleged, so was the deed of trust. Although the conveyance of the note may have been separated in time from the execution, recording, and physical transfer of the instrument reflecting the assignment of the deed of trust, that gap does not alter the legal fact that the deed of trust and the right to foreclose was, as a matter of law, transferred along with the note. (See *U.S. v. Thornburg* (9th Cir. 1996) 82 F.3d 886, 892 [even if party holding the deed of trust instrument fails "to hand [it] over" to the note holder, the note holder has the right to foreclose].) Under California law, therefore, there is no basis for Yhudai's allegation that the deed of trust was assigned to Deutsche Bank after Deutsche Bank acquired the note.

supra, 245 Cal.App.4th at pp. 813-814; *Melendrez v. D & I Investment, Inc.* (2005) 127 Cal.App.4th 1238, 1258; *Fontenot v. Wells Fargo Bank, N.A.* (2011) 198 Cal.App.4th 256, 270, disapproved on another point in *Yvanova*, *supra*, 62 Cal.4th at p. 939, fn. 13.)

Yhudai further contends that language in the deed of trust confers upon him, as the borrower, the right to sue "to assert the non-existence of a default or any other defense . . . to acceleration and sale." Yhudai has not, however, asserted the nonexistence of a default, and his only purported "defense" to foreclosure is that the 2009 assignment is void. As explained above, we reject his legal conclusion that the assignment is void. Even if language in the deed of trust might have provided Yhudai with standing to assert a defense to prevent a foreclosure, it does not help him here. (See *Saterbak*, *supra*, 245 Cal.App.4th at pp. 816-817.)

Yhudai also argues that the deed of trust is an adhesion contract that "does not use conspicuous and clear language to warn [him] that he has no power to challenge an invalid assignment of [his] loan." The problem with Yhudai's claims, however, is not that the deed of trust precludes him from alleging an invalid assignment, but that he has not sufficiently alleged an invalid assignment.

Finally, Yhudai contends that he should be permitted to amend to add a cause of action for wrongful foreclosure. This proposed cause of action, however, is similarly dependent upon the allegation that the 2009 assignment is void because it was made after the ISA Trust's March 2007 closing date. Because he has not alleged sufficient facts to establish that critical allegation, the proposed new cause of action would also fail as a matter of law.

DISPOSITION

The judgment is affirmed. Respondents shall recover their costs on appeal.

CERTIFIED FOR PUBLICATION.

ROTHSCHILD, P. J.

We concur:

CHANEY, J.

LUI, J.

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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN MATEO

REGINA MANANTAN,

Plaintiff,

vs.

WELLS FARGO BANK, N.A., D/B/A AMERICA'S SERVICING COMPANY, U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, SUCCESSOR-IN-INTEREST TO BANK OF AMERICA, NATIONAL ASSOCIATION AS TRUSTEE, SUCCESSOR BY MERGER TO LASALLE BANK, NATIONAL ASSOCIATION, AS TRUSTEE FOR MORGAN STANLEY MORTGAGE LOAN TRUST 2007-7AX, QUALITY LOAN SERVICE CORPORATION, MOAB, INVESTMENT GROUP, LLC, and DOES 1 through 50, inclusive,

Defendants.

Case No. CIV 535902

[PROPOSED] ORDER GRANTING MOTION FOR RECONSIDERATION

[Filed concurrently with Notice of Motion and Motion; Memorandum of Points and Authorities; Request for Judicial Notice]

Date: September 6, 2016
Time: 9:00 a.m.
Dept.: Law & Motion

Action Filed: October 20, 2015
Trial Date: None Set

The Motion for Reconsideration of Defendants WELLS FARGO BANK, N.A. dba AMERICA'S SERVICING COMPANY and U.S. BANK, N.A. AS TRUSTEE ("Defendants") concerning Plaintiffs REGINA MANANTAN's ("Plaintiff") Second Amended Complaint came on regularly for hearing before this Court on September 6, 2016.

Having reviewed and considered the written submissions of the parties and the arguments of counsel at the hearing, and good cause appearing the court orders as follows:

IT IS HEREBY ORDERED THAT:

1. Defendants' Motion Reconsideration is GRANTED and Defendants' demurrer to Plaintiff's Second Amended Complaint is sustained without leave to amend.

2. Plaintiff REGINA MANANTAN shall take nothing by way of her Second Amended Complaint.

3. Judgment shall be entered in favor of Defendants and against Plaintiff REGINA MANANTAN.

DATED: _____, 2016

_____
Judge of the Superior Court

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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN MATEO

REGINA MANANTAN,

Plaintiff,

vs.

WELLS FARGO BANK, N.A., D/B/A AMERICA'S SERVICING COMPANY, U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, SUCCESSOR-IN-INTEREST TO BANK OF AMERICA, NATIONAL ASSOCIATION AS TRUSTEE, SUCCESSOR BY MERGER TO LASALLE BANK, NATIONAL ASSOCIATION, AS TRUSTEE FOR MORGAN STANLEY MORTGAGE LOAN TRUST 2007-7AX, QUALITY LOAN SERVICE CORPORATION, MOAB, INVESTMENT GROUP, LLC, and DOES 1 through 50, inclusive,

Defendants.

Case No. CIV 535902

PROOF OF SERVICE

Date: September 6, 2016
Time: 9:00 a.m.
Dept.: Law & Motion

Action Filed: October 20, 2015
Trial Date: None Set

PROOF OF SERVICE
Regina Manantan v. Wells Fargo Bank, N.A., et al.
San Mateo County Superior Court Case No. CIV 535902

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of San Francisco, State of California. My business address is One Embarcadero Center, Suite 2600, San Francisco, CA 94111.

On August 9, 2016, I served true copies of the following document(s):

NOTICE OF MOTION AND MOTION FOR RECONSIDERATION

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR RECONSIDERATION

REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF MOTION FOR RECONSIDERATION

on the interested parties in this action as follows:

Timothy L. McCandless, Esq. Law Offices of Timothy McCandless 26875 Calle Hermosa, Suite A Capistrano Beach, CA 92624	Attorneys for Plaintiff Regina Manantan Telephone: (925) 957-9797 Facsimile: (925) 957-9799 E-Mail: legal@prodefenders.com
Joanna Kozubal, Esq. 375 Potrero Avenue, #5 San Francisco, CA 94103	Attorneys for Defendant Moab Investment Group, LLC Telephone: (415) 864-6962 Facsimile: (650) 636-9791
Nancy Lee, Esq. McCarthy & Holthus, LLP 1770 4th Avenue San Diego, CA 92101	Attorneys for Defendant Quality Loan Service Corporation Telephone: (619) 685-4800 Email: nll@mccarthyholthus.com

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Severson & Werson's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

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

Executed on August 9, 2016, at San Francisco, California.

Chilaren L. Kada

Chilaren L. Kada