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

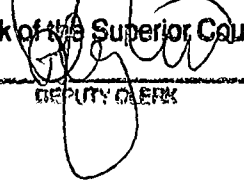
10
11 SUPERIOR COURT OF CALIFORNIA
12 COUNTY OF SAN MATEO

13
14 REGINA MANANTAN,
15 Plaintiff,
16 vs.

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

FILED
SAN MATEO COUNTY

JUL 25 2016

Clerk of the Superior Court
By 
DEPUTY CLERK

Case No. CIV 535902

**DEFENDANTS' OBJECTION AND
RESPONSE TO PLAINTIFF'S SUR-
REPLY IN SUPPORT OF DEMURRER
TO PLAINTIFF'S SECOND AMENDED
COMPLAINT**

Date: July 29, 2016
Time: 9:00 a.m.
Dept.: Law & Motion

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

CIV535902
OBJECT
Objection
126092



1 **I. INTRODUCTION AND OBJECTION TO SURREPLY**

2 Defendants WELLS FARGO BANK, N.A. dba AMERICA’S SERVICING COMPANY
3 and U.S. BANK, N.A. AS TRUSTEE (“Defendants”) filed a demurrer to Plaintiff REGINA
4 MANANTAN’s (“Plaintiff”) Second Amended Complaint (“SAC”). This Court continued the
5 demurrer hearing to July 29, 2016 following an original hearing and oral argument in July 15,
6 2016.

7 In continuing the hearing, the Court did not ask the parties for additional briefing or oral
8 argument after the matter was submitted by all parties following oral argument. Nevertheless, in
9 a procedurally improper attempt to influence this Court’s ruling, Plaintiff filed a Sur-Reply related
10 to the demurrer which was received by Defendants on July 21, 2016. Plaintiff cites no procedural
11 rule allowing for a sur-reply, nor did the Court request additional briefing. Accordingly,
12 Defendants Object to the sur-reply this Court should disregard Plaintiff’s improper sur-reply in its
13 ruling on the submitted demurrer.

14 In the event that the Court, in its discretion, considers the arguments presented in the sur-
15 reply, Defendants respectfully request that the Court likewise consider the arguments contained
16 herein.

17 **II. LEGAL ARGUMENT**

18 **A. Yvanova Expressly Does Not Address the Allegations Set forth in Plaintiff’s Second**
19 **Amended Complaint.**

20 Paragraph 60 of Plaintiff’s SAC states, in pertinent part, the following:

21 Despite being paid for the full balance of the mortgage loan, the original lender [acting as
22 the securitization sponsor and seller] as well as the interim successor lender [securitization
23 depositor] committed a material breach of the governing securitization agreement(s) when
these parties failed to assign the mortgage (DOT) and the underlying Original Mortgage
Note to the *Trustee* of the REMIC MBS Trust on or before the trust’s *Closing Date*.

24 The SAC unambiguously alleges that the foreclosure sale was “void” because of the
25 “closing date” argument originally accepted with favor in the *Glaski v. Bank of America* case.
26 (*Glaski*, (2013) 218 Cal.App.4th 1079, 1094-1095.) In their briefing, Plaintiff’s rely on the more
27 recent *Yvanova* case for the proposition that they have alleged a void sale. (*Yvanova v. New*
28 *Century Mortg. Corp.* (2016) 62. Cal. 4th 919.) However, a careful reading of *Yvanova* illustrates

1 the Court expressly declined to determine whether Plaintiff's "Closing Date" theory alleges facts
2 sufficient to render a foreclosure void as Plaintiff contends in the briefing and at oral argument in
3 this case.

4 The holding in *Yvanova* was purposely and expressly limited in stating that borrowers
5 have standing to challenge assignments as void, but not as voidable. (*Yvanova, supra*, 62 Cal.4th
6 at 939.) Specifically, and crucial to the analysis in this case, *Yvanova* expresses no opinion as to
7 Plaintiff's "Closing Date" theory set forth in the SAC:

8 Defendants cite the decision in *Rajamin v. Deutsche Bank Nat. Trust Co.* (2nd
9 Cir.2014) 757 F.3d 79 (Rajamin), as a "rebuke" of *Glaski*. Rajamin's expressed
10 disagreement with *Glaski*, however, was on the question *941 whether, under New
11 York law, an assignment to a securitized trust made after the trust's closing date is
12 void or merely voidable. (*Rajamin*, at p. 90.) *As explained earlier, that question is
13 outside the scope of our review and we express no opinion as to Glaski's
14 correctness on the point.*

15 (Emphasis added.) (*Yvanova, supra*, 62 Cal.4th at 940–41.) Thus, reliance on *Yvanova* for
16 the proposition that the assignment is "void" as Plaintiff does in this case is misplaced. *Yvanova*
17 specifically states the question is outside the scope of its review.

18 **B. *Saterbak* Properly Holds the Assignment is Merely Voidable under Plaintiff's
19 "Closing Date" Theory**

20 Recognizing the *Yvanova* Court expressly declined to determine whether the fact pattern
21 presented in Plaintiff's "Closing Date" theory rendered an assignment void or merely voidable, the
22 *Saterbak* Court addressed the issue. In doing so, it recognized "Yvanova expressly offers no
23 opinion as to whether, under New York law, an untimely assignment to a securitized trust made
24 after the trust's closing date is void or merely voidable." (*Saterbak v. JPMorgan Chase Bank, N.A.*
25 (2016) 245 Cal.App.4th 808, 815.)

26 *Saterbak* decides the question at issue in this case as follows:

27 We conclude such an assignment is merely voidable. (See *Rajamin v. Deutsche
28 Bank Nat'l Trust Co.* (2d Cir.2014) 757 F.3d 79, 88–89 ["the weight of New York
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mortgages void as a matter of trust law"; "an unauthorized act by the trustee is not
void but merely voidable by the beneficiary"].)

(*Saterbak, supra*, 245 Cal.App.4th at 815.) Because the Court determined the assignment

1 was merely voidable, it concluded as follows: “Saterbak lacks standing to challenge alleged
2 defects in the MERS assignment of the DOT to the 2007–AR7 trust.” (*Id.* at 815.)

3 The *Saterbak* Court also rejected Plaintiff’s argument that the Homeowners’ Bill of Rights
4 (“HBOR”) somehow salvages Plaintiff’s “Closing Date” theory. However, *Saterbak* rejects this
5 argument for the same reasons Defendants point to it in their briefing – that the assignment was
6 recorded prior to the enactment of HBOR and that it is not retroactive.

7 The FAC alleges the DOT was assigned on December 27, 2011, and recorded on
8 December 17, 2012. *Saterbak* fails to point to any provision suggesting that the
9 California Legislature intended the HBOR to apply retroactively. (*Myers v. Philip*
10 *Morris Companies, Inc.* (2002) 28 Cal.4th 828, 841, 123 Cal.Rptr.2d 40, 50 P.3d
11 751 [“California courts comply with the legal principle that unless there is an
‘express retroactivity provision, a statute will not be applied retroactively unless it
is very clear from extrinsic sources that the Legislature ... must have intended a
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rights on appeal.

12 (*Saterbak*, 245 Cal.App.4th at 818.)

13 Thus, HBOR does not salvage Plaintiff’s theory as alleged in the briefing.

14 III. CONCLUSION

15 Based on the foregoing, this Court should properly conclude that Plaintiff lacks standing to
16 challenge the assignment as it is voidable, not void, under the “Closing Date” theory set forth in
17 the SAC. The Court should likewise conclude that the HBOR does not salvage this theory,
18 following the reasoning in *Saterbak*.

19 Defendant respectfully submits that Plaintiff’s unsolicited and procedurally improper sur-
20 reply is properly disregarded by the Court. However, in the event the Court does consider the
21 briefing, the Court should also consider the arguments herein as a matter of fairness.

22 DATED: July 25, 2016

SEVERSON & WERSON

A Professional Corporation

By: 

23
24 Brian S. Whittemore

25 Attorneys for Defendants WELLS FARGO BANK,
26 N.A. dba AMERICA’S SERVICING COMPANY and
27 U.S. BANK, N.A. AS TRUSTEE
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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 July 25, 2016, I served true copies of the following document(s):

**DEFENDANTS' OBJECTION AND RESPONSE TO PLAINTIFF'S SUR-REPLY
IN SUPPORT OF DEMURRER TO PLAINTIFF'S SECOND AMENDED
COMPLAINT**

on the interested parties in this action as follows:

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Executed on July 25, 2016, at San Francisco, California.


Chilarén J. Kada

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SAN FRANCISCO, CA 94111
UNITED STATES US

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LAW OFFICE OF TIMOTHY MCCANDLESS

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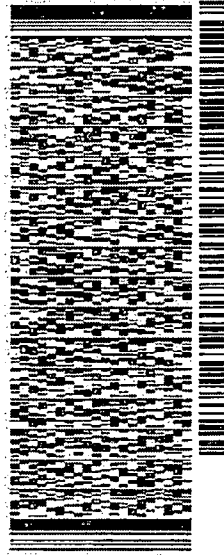
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UNITED STATES US

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TO JOANNA KOZUBAL, ESQ.

375 POTRERO AVENUE

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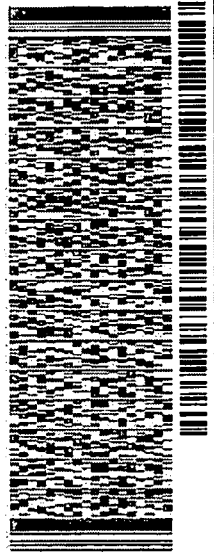
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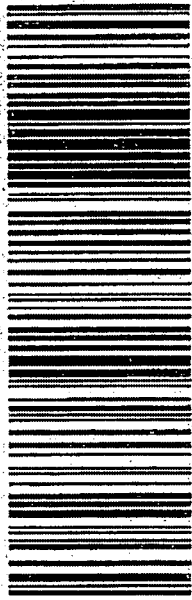
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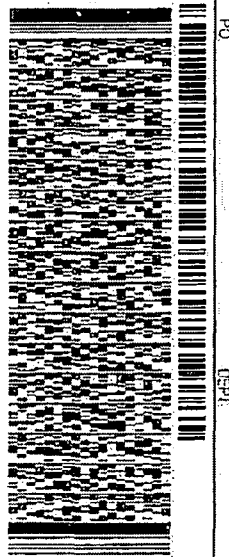
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UNITED STATES US

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MCCARTHY & HOLTTHUS LLP
1770 FOURTH AVENUE

SAN DIEGO CA 92101
(619) 685-4800 REF: 66300 1722
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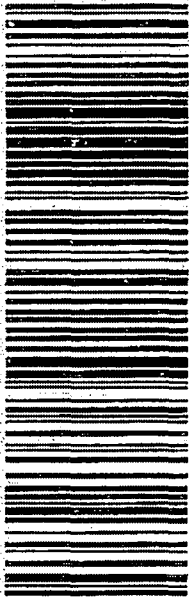


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II. LEGAL ARGUMENT

A. Yvanova Expressly Does Not Address the Allegations Set forth in Plaintiff’s Second Amended Complaint.

Paragraph 60 of Plaintiff’s SAC states, in pertinent part, the following:

Despite being paid for the full balance of the mortgage loan, the original lender [acting as the securitization sponsor and seller] as well as the interim successor lender [securitization depositor] committed a material breach of the governing securitization agreement(s) when these parties failed to assign the mortgage (DOT) and the underlying Original Mortgage Note to the *Trustee* of the REMIC MBS Trust on or before the trust’s *Closing Date*.

The SAC unambiguously alleges that the foreclosure sale was “void” because of the “closing date” argument originally accepted with favor in the *Glaski v. Bank of America* case. (*Glaski*, (2013) 218 Cal.App.4th 1079, 1094-1095.) In their briefing, Plaintiff’s rely on the more recent *Yvanova* case for the proposition that they have alleged a void sale. (*Yvanova v. New Century Mortg. Corp.* (2016) 62. Cal. 4th 919.) However, a careful reading of *Yvanova* illustrates

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15 (Emphasis added.) (*Yvanova, supra*, 62 Cal.4th at 940–41.) Thus, reliance on *Yvanova* for
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18 **B. *Saterbak* Properly Holds the Assignment is Merely Voidable under Plaintiff's**
19 **"Closing Date" Theory**

20 Recognizing the *Yvanova* Court expressly declined to determine whether the fact pattern
21 presented in Plaintiff's "Closing Date" theory rendered an assignment void or merely voidable, the
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rights on appeal.

12 (*Saterbak*, 245 Cal.App.4th at 818.)

13 Thus, HBOR does not salvage Plaintiff’s theory as alleged in the briefing.

14 III. CONCLUSION

15 Based on the foregoing, this Court should properly conclude that Plaintiff lacks standing to
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22 DATED: July 25, 2016

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By: 

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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 July 25, 2016, I served true copies of the following document(s):

**DEFENDANTS' OBJECTION AND RESPONSE TO PLAINTIFF'S SUR-REPLY
IN SUPPORT OF DEMURRER TO PLAINTIFF'S SECOND AMENDED
COMPLAINT**

on the interested parties in this action as follows:

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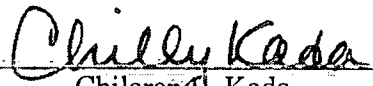
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Corporation
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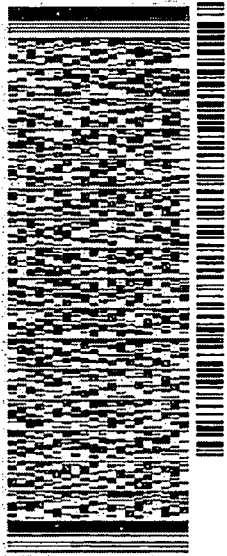
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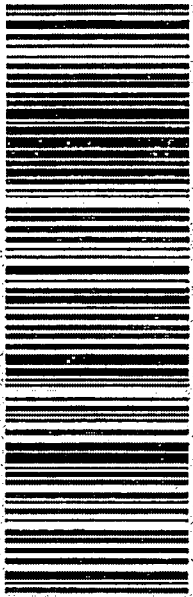
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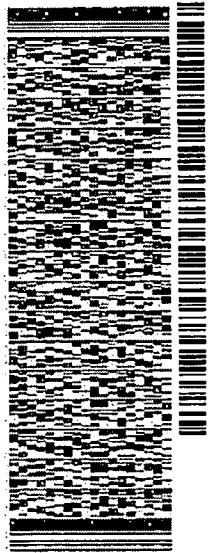
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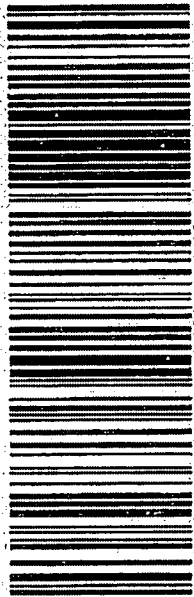
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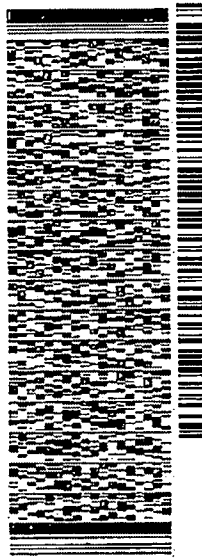
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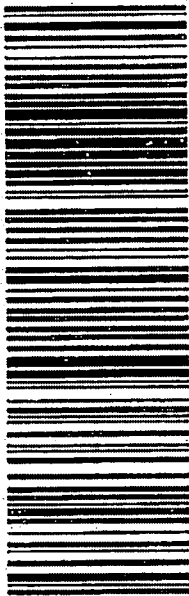
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