

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

Sarina Nelson  
4081 County Rd. 203  
P.O. Box 1045  
Hamilton City, Ca 95951  
Telephone: (530) 354-6212

In Propria Persona

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF GLENN

SARINA NELSON, )  
 )  
 Plaintiff )  
 )  
 Vs )  
 )  
 DEUTSCHE BANK NATIONAL TRUST )  
 COMPANY, AS TRUSTEE OF THE )  
 INDYMAC IMSC MORTGAGE, its )  
 assignees and/or successors in interest, )  
 )  
 Defendants )  
 \_\_\_\_\_ )

CASE NO.: 11CV00922

PLAINTIFF'S ADENDUM TO  
RESPONSE TO DEFENDANT'S  
DEMURRER to PLAINTIFFS'  
COMPLAINT; MEMORANDUM  
OF POINTS AND AUTHORITIES  
IN SUPPORT THEREOF  
  
Hearing \_\_\_\_\_  
Dept: \_\_\_\_\_  
Hearing Judge: \_\_\_\_\_  
Action filed: \_\_\_\_\_  
Trial date: \_\_\_\_\_

TO THIS HONORABLE COURT, ALL PARTIES AND THEIR ATTORNEYS OF  
RECORD HEREIN:

I, Sarina Nelson, herein after known as Plaintiff in this document but want to also  
express the fact that I Sarina Nelson is also known as Defendant in a previous  
filing which now should include evidence from both cases since they have been  
enjoined. (in Court Record File cases enjoined 11CV00922 and 10NUD00302 )

Plaintiff does hereby and has continually stated claims against Deutsche  
Bank National Trust that they do not have standing to file an Unlawful  
Detainer action and/or have true ownership of the underlying "Deed of  
**TRUST**" (emphasis added). Regardless of them not having possession of

1 the “original promissory note”, they still do not have standing to file this  
2 or any action against Plaintiff/Defendant.

3 The transfer of the Deed of Trust as submitted by Plaintiff through  
4 out the entire court proceedings that has raised so much question with  
5 MERS and Dennis Kirkpatrick who claimed to be the Vice Pres. of MERS  
6 is in the court record and has been submitted as evidence. This along with  
7 many other facts that have presented themselves, and have been presented  
8 to this court are on record. MERS during the period they assigned the  
9 note and Deed of Trust was not registered with the State of California and  
10 do not meet the requirement for exclusion as do many banks in the State of  
11 California so were not able to transfer or assign anything. MERS was not  
12 eligible or had any power to transfer, assign, sell or give the Deed of Trust  
13 to ANYONE.

14 This clouds the title on said property PRIOR to the alleged sale and  
15 alleged purchase of the said property at the alleged foreclosure sale. Even  
16 just for this reason but not limited to, it is clear that Deutsche Bank  
17 National Trust could not and does not have standing to have any part of an  
18 interest in the Deed of Trust for this said property.

19 “Any attempt to transfer the beneficial interest of a trust deed without  
20 ownership of the underlying note is VOID under California Law.”

21 **RESPONSE TO DEUTSCHE BANK NATIONAL TRUST DEMURRER**

22  
23 **In response to #1.** ) I believe that everyone is missing the #1 problem  
24 MERS has in CA. That has become “common knowledge” throughout the  
25 entire legal process here in the State of California. Deutsche Bank  
26 National Trust through and by their professional team of attorneys must  
27 have access to this information and other court rulings to date. AND the  
28

1 legal counsel for Deutsche Bank National Trust would therefore be  
2 “negligent” in their pursuit of carrying out an Unlawful Detainer  
3 proceeding on property they are not legally entitled to.

4 MERS is a Non-Authorized Agent and cannot legally assign the  
5 Promissory Note, making any foreclosure by other than the original lender  
6 wrongful, for the following reasons.  
7

8  
9 1) Under established and binding Ca law, a Nominee can’t assign  
10 the Note. *Born V. Koop* 1962 200 C. A. 2d 519[200 CalApp2d  
11 Page 527, 528

12 2) On most Notes, the term Nominee is not included and  
13 MERS never takes ownership, making it unenforceable and  
14 unassignable by MERS.

15  
16 *Ott v. Home Savings & Loan Association*, 265 F. 2d 643  
17 [647,648

18 3) Ca Civil Code §2924, et seq. is exhaustive and a Nominee is  
19 never included as an acceptable form of “authorized agent” in a  
20 judicial or non-judicial foreclosure.  
21

22 Finally, *GOMES V. COUNTRYWIDE HOME LOANS,*  
23 *INC.*, 192 Cal.App.4th 1149, IS FLAWED!

24 a) The Gomes case simply failed to address and apply the  
25 established and binding definition of a nominee.  
26

27 b) The first thing the Deed of Trust does is (i) take away  
28 MERS right to payments and (ii) take away the right to enforce

1 the Note.

2 c) REGARDLESS WHAT A BORROWER AGREES TO, a  
3 borrower cannot legally grant MERS the right to assign the  
4 note or any of the rights of the note owner.  
5

6 MERS cannot legally assign a Promissory Note because, MERS is a Non-  
7 Authorized Agent under Established and Binding California Real Property  
8 Law and the borrower can't provide that power to MERS.  
9

10 **First**, a Nominee is someone who is nominated potentially for a future  
11 position. Much like being nominated for President, yet a Presidential  
12 Nominee doesn't receive any powers until the person actually becomes  
13 President.  
14

15 **Second**, in the Deed of Trust MERS is identified "Solely as a Nominee"  
16 and as the Beneficiary. Which is logically and legally impossible, because  
17 a party can only be either the nominated Beneficiary or the Beneficiary.  
18 You can't "not be" and "be" the beneficiary at the same time.  
19

20 **Third**, Ca Civil Code §2924, et seq. is exhaustive and a Nominee is never  
21 included as an acceptable form of "authorized agent" in a judicial or non-  
22 judicial foreclosure.

23 **Fourth**, MERS acts "Solely as a Nominee" for lenders, and under  
24 Established California Law a "Nominee" is a "Non-Authorized" form of  
25 agent, which fails to comply with California Civil Code §§ 2924 through  
26 2924k, as a nominee inherently lacks the right to enforce or assign, the  
27 Note or real property ownership rights, per the following case.  
28

1 “In Cisco v. Van Lew, 60 Cal.App.2d 575, 583-584, 141 P.2d 433, 438.,  
2 Cisco could not enforce the land sale contract because he was not a party  
3 to it, the court, at pages 583-584, said: "The word 'nominee' in its  
4 commonly accepted meaning connotes the delegation of authority to the  
5 nominee in a representative or nominal capacity only, and does not  
6 connote the transfer or assignment to the nominee of any property in or  
7 ownership of the rights of the person nominating him."  
8

9 Born V. Koop 1962 200 C. A. 2d 519[200 CalApp2d Page 527, 528]

10  
11 **Fifth**, in addition to MERS’ inherit lack of authority, MERS is not a party  
12 to the Note and the Note fails to use the words, for example “ Lehman  
13 Brothers Bank, FSB or Lehman Brothers Bank, FSB Nominee”.

14 “The purpose of the document in question here was to offer an obligation  
15 to Harold L. Shaw alone and not to his nominee or any other person  
16 whomsoever.”  
17

18 Ott v. Home Savings & Loan Association, 265 F. 2d 643 [647,648], see  
19 file below  
20

21 **Finally**, GOMES V. COUNTRYWIDE HOME LOANS, INC., 192  
22 Cal.App.4th 1149, IS FLAWED!

23 a) The Gomes case simply failed to address and apply the established and  
24 binding definition of a nominee.

25 b) The first thing the Deed of Trust does is (i) take away MERS right to  
26 payments and (ii) take away the right to enforce the Note.  
27

28 c) REGARDLESS WHAT A BORROWER AGREES TO, a “Borrower”

1 cannot legally grant MERS the right to assign the note or any of the rights  
2 of the note owner.

3 “It is no defense to deceit that false statement was made pursuant to some  
4 statutory scheme such as statutory procedures for trustee’s sale (§ 2924 et  
5 seq.)” Block v. Tobin (App. 1 Dist. 1975) 119 Cal.Rptr. 288, 45  
6 Cal.App.3d 214.

7  
8 “It is true, as Defendants (Duetsche Bank National Trust and their  
9 attorneys) repeatedly assert, that California Civil Code § 2924, et seq.  
10 authorizes non-judicial foreclosure in this state. **It is not the case,**  
11 **however, that the availability of a non-judicial foreclosure process**  
12 **somehow exempts lenders, trustees, beneficiaries, servicers, and the**  
13 **numerous other (sometimes ephemeral) entities involved in dealing**  
14 **with Plaintiffs from following the law. (emphasis added)” Sacchi vs.**  
15 **Mortgage Electronic Registration Systems, Inc. US Central District Court**  
16 **of California CV 11-1658 AHM (CWx), June 24, 2011**  
17  
18 Therefore, without an endorsement on the Note and an assignment directly  
19 from the original lender, assignments by MERS; the substitution of the  
20 Trustee; and trustee sale are unlawful and void.

21  
22  
23 “The assignment of the lien without a transfer of the debt was a nullity in  
24 law.” (Polhemus v. Trainer, 30 Cal. 685; Peters v. Jamestown Box Co., 5  
25 Cal. 334; Hyde v. Mangan, 88 Cal. 319; Jones on Pledges, secs. 418, 419;  
26 Van Ewan v. Stanchfield, 13 Minn. 75.)  
27  
28

1 “A lien is not assignable unless by the express language of the statute.”

2 (Jones on Liens, sec. 982; Wingard v. Banning, 39 Cal. 343; Ruggles v.

3 Walker, 34 Vt. 468; Wing v. Griffin, 1 Smith, E.D. 162; Holly v.

4 Hungerford, 8 Pick. 73; Daubigny v. Duval, 5 Tenn. 604.)

5 CALIFORNIA SUPREME COURT, DAVIS, BELAU & CO. V.

6 NATIONAL SUR. CO., 139 CAL 223, 224 (1903)

8 “The note and mortgage are inseparable; the former as essential, the latter

9 as an incident. An assignment of the note carries the mortgage with it,

10 while an assignment of the latter alone is a nullity.”

11 CARPENTER V. LONGAN, 83 U. S. 271 (1872), U.S. Supreme Court

12 (1)“California courts have repeatedly allowed parties to pursue additional

13 remedies for misconduct arising out of a nonjudicial foreclosure sale when

14 not inconsistent with the policies behind the statutes”

15 California Golf, L.L.C. v. Cooper (2008) 163 Cal.App.4th 1053,1070

16 “(2) Whenever a court becomes aware that a contract is illegal, it has a

17 duty to refrain from entertaining an action to enforce the contract. (3)

18 Furthermore the court will not permit the parties to maintain an action to

19 settle or compromise a claim based on an illegal contract”

20 Bovard v. American Horse Enterprises, Inc., 201 Cal.App.3d 832 (1988)

21 1) On April 11th, 2011, The Honorable Judge Margaret M. Mann made

22 very clear the following, based upon California Supreme Court and U.S.

23 Supreme court cases:

1 • Assignments must be recorded **before** (emphasis added) the foreclosure  
2 sale

3 • Recorded assignments are necessary despite MERS' role

4 • MERS's system is not an alternative to statutory foreclosure law

5 Bankruptcy No: 10-17456-MM13 re: Eleazar Salazar,  
6

7 2) Nothing under California Civil Code §§ 2924 through 2924k applies,  
8 unless there is a legal chain of title for the Deed of Trust with the Note  
9 from the original lender to MERS, and then to the foreclosing party.  
10

11 The First Fatal Flaw – MERS never takes ownership of the underlying  
12 Note, Voiding the “Original” Deed of Trust.  
13

14 Under California Law, the named Beneficiary on the Deed of Trust must  
15 have ownership of the underlying Note. MERS consistently claims to be  
16 only “Holding the Note” as a Nominee for the original lender, never  
17 “Owning the Note”.  
18

19 Why MERS doesn't have ownership of the Note:  
20

21 1. There is no assignment or endorsement of the Note from the original  
22 lender to MERS.

23 2. The Deed of Trust is not a substitute for an Assignment or legal transfer  
24 of the Note from the Original lender to MERS.

25 “It is well established law in the Ninth Circuit that the assignment of a  
26 trust deed does not assign the underlying promissory note and right to be  
27 paid, and that the security interest is incident of the debt.” Rickie Walker  
28



1 case, see attached exhibit \_\_\_\_\_.

2 3. MERS is a mortgage exchange not unlike a stock exchange. It allows  
3 banks to buy and sell home mortgages much like stock. Stock exchanges  
4 don't own the stock on their exchange, only the investors do.

5 4. A Nominee in California cannot own the Note,

6  
7 "The word "nominee" in its commonly accepted meaning, connotes the  
8 delegation of authority to the nominee in a representative or nominal  
9 capacity only, and does not connote the transfer or assignment to the  
10 nominee of any property in or ownership of the rights of the person  
11 nominating him."

12 Cisco v. Van Lew, 60 Cal.App.2d 575, 583-584, 141 P.2d 433, 438.

13 5. In California, a Note payable to the original lender is not a bearer  
14 instrument, the original lender must indorse or assign the Note to MERS.  
15 See Cal Com. Code §§3109,3201,3203,3204. and Rickie Walker case  
16 Order, and P&A pg6 attached exhibit \_\_\_\_\_.

17  
18  
19 6. MERS requires that the owner of the Note never claim MERS as a  
20 "Note-Owner" MERS Membership Rule 8 Foreclosure, Section 2(a)(i),  
21 page 25, 26, see attached below exhibit \_\_\_\_\_.

22 7. MERS consistently argues in court that it does not own the promissory  
23 notes, MERS v. NEBRASKA DEPARTMENT OF BANKING AND  
24 FINANCE No. S-04-786, see attached exhibit \_\_\_\_\_.

25  
26 8. Finally, Moeller v. Lien and CCC § 2924 DOES NOT "EXPRESSLY"  
27 EXCLUDE OR SUPERCEDE CA Commercial Code § 3301, OR ANY  
28

1 OTHER CA LAWS!

2 In the case of California Golf, L.L.C. v. Cooper, 163 Cal. App. 4th 1053,  
3 78 Cal. Rptr. 3d 153, 2008 Cal. App. LEXIS 850 (Cal. App. 2d Dist.  
4 2008), the Appellate Court held that the remedies of 2924 h were not  
5 exclusive.

6  
7 9. U.S. Supreme Court decision, Carpenter v. Longan (Carpenter v.  
8 Longan, 83 U.S. 271, 21 L.Ed. 313 [1873]):

9 “The note and mortgage are inseparable; the former as essential, the latter  
10 as an incident. An assignment of the note carries the mortgage with it,  
11 while an assignment of the latter alone is a nullity. Case law in virtually  
12 every state follows Carpenter.”

13  
14 Deed of Trust is also void, without a recorded assignment of the Deed of  
15 Trust for each transfer of the Note:

16  
17 1. MERS Involvement in the loan effectively stripped the deed of trust lien  
18 from the land and a foreclosure is not legally possible, Bellistri v. Ocwen  
19 Loan Servicing, LLC, 284 S.W.3d 619 (Mo.App. E.D.,2009), Although  
20 this is a case out of Missouri court it does have bearing here in California  
21 as to what it addresses: see exhibit \_\_\_\_\_

22  
23 2. Any assignment of the Deed of Trust & Note from MERS to a  
24 successor is void and fraudulent. RICKIE WALKER CASE, see attached  
25 exhibit \_\_\_\_\_.

26  
27 Therefore, MERS definition of “Holding the Note” is not the legal  
28 equivalent of “Owning the Note”;

1 California Civil Code section 2924 for foreclosure only applies if MERS  
2 owned the note.

3  
4 MERS tracking system is not a legal chain of title and the debt may be  
5 uncollectible. When a Note is sold, it has to be indorsed the same way  
6 you basically sign a check for deposit or cashing.

7  
8 Under California Law the Note is not a bearer instrument, but an  
9 instrument payable only to a specifically identified person, per California  
10 Commercial Code §3109; any transfer of the Note requires a legal  
11 Negotiation, Endorsement and a physical delivery of the note to the  
12 transferee to perfect the transfer, per California Commercial Codes  
13 §§3201, 3203, 3204. see attached Rickie Walker Order exhibit \_\_\_\_\_.  
14

15  
16 “MERS Basics “Registration vs. Recording. (PPT Slide)

17 o MERS is not a system of legal record nor a replacement for the public  
18 land records.

19 o Mortgages must be recorded in the county land records.

20 o MERS is a tracking system. No interests are transferred on the MERS®  
21 System, only tracked.”,

22 MERS Southeast Legal Seminar – MERS Basics slide 7, see

23 <http://www.mersinc.org/files/filedownload.aspx?id=63&table=DownloadFile>  
24

25  
26 “A mortgage note holder can sell a mortgage note to another in what has  
27 become a gigantic secondary market. . . . For these servicing companies to  
28

1 perform their duties satisfactorily, the note and mortgage were bifurcated.”

2 Clear Title May Not Derive From A Fraud (including a bona fide  
3 purchaser for value).

4 In the case of a fraudulent transaction California law is settled. The Court  
5 in Trout v. Taylor, (1934), 220 Cal. 652 at 656 made as much plain:

6 “Numerous authorities have established the rule that an instrument wholly  
7 void, such as an undelivered deed, a forged instrument, or a deed in blank,  
8 cannot be made the foundation of a good title, even under the equitable  
9 doctrine of bona fide purchase. Consequently, the fact that defendant  
10 Archer acted in good faith in dealing with persons who apparently held  
11 legal title, is not in itself sufficient basis for relief.” • (Emphasis added,  
12 internal citations omitted).

13  
14  
15  
16 This sentiment was clearly echoed in 6 Angels, Inc. v. Stuart-Wright  
17 Mortgage, Inc. (2001) 85 Cal.App.4th 1279 at 1286 where the Court  
18 stated:

19 “It is the general rule that courts have power to vacate a foreclosure sale  
20 where there has been fraud in the procurement of the foreclosure decree or  
21 where the sale has been improperly, unfairly or unlawfully conducted, or  
22 is tainted by fraud, or where there has been such a mistake that to allow it  
23 to stand would be inequitable to purchaser and parties.” **(Emphasis**  
24 **added).**  
25  
26  
27  
28

1 In Alliance Mortgage Co. v. Rothwell (1995) 10 Cal. 4th 1226, 1231 [44  
2 Cal. Rptr. 2d 352, 900 P.2d 601], the California Supreme Court concluded  
3 that:

4 “ ‘the anti-deficiency laws were not intended to immunize wrongdoers  
5 from the consequences of their fraudulent acts’ ” and that, if the court  
6 applies a proper measure of damages, “ ‘fraud suits do not frustrate the  
7 antideficiency policies because there should be no double recovery for the  
8 beneficiary.’ ” (Id. at p. 1238.)

9  
10 Therefore, any attempt to collect by other than the original lender may be  
11 impossible without a legal chain of title, because MERS tracking system is  
12 not a legal chain of title.  
13

14  
15 Negligence on the part of Deutsche Bank National Trust is in question  
16 now by the Federal Government and now also Office of Thrift Supervision  
17 for OneWest Bank. As this issue is being addressed it seems rather  
18 premature for either of them to proceed in the action of taking someone’s  
19 home and disrupting, harassing and harming. Negligence in this case  
20 created an environment that appears to have been purposefully planned to  
21 prevent the homeowner from maintaining or correcting any deficiencies or  
22 making up any late payments prior to foreclosure actions.  
23

24  
25 **In response to #2.** ) Sufficient facts stated above in response to Deutsche  
26 Bank National Trust attorneys at law in Plaintiff’s response to #1 conclude  
27 that an error has been made and to further proceed in an Unlawful  
28

1 Detainer action knowing that the transfer of the Deed of Trust was  
2 unlawful and void would be FRAUD on the part of the Defendant  
3 Deutsche Bank National Trust and their legal representatives.  
4

5 It would also be presumed and can be proven that as Deutsche Bank  
6 National Trust is a representative for OneWest Bank and as a Trustee and  
7 a representative in a court action it would seem appropriate that these legal  
8 representatives would also be aware of the United States of America  
9 Office of Thrift Supervision Consent Order OTS Docket No. 18129  
10 against OneWest Bank here in the State of California, see exhibit \_\_\_\_\_.  
11

12 As a representative and alleged Trust for OneWest Bank it is a necessary  
13 request that the Deutsche Bank National Trust and their attorneys submit  
14 “proof” that the property and transfers of Deed of Trust and alleged  
15 Trustee Sale be submitted to this court which provide that the transactions  
16 pertaining to Plaintiff’s said property be examined to determine the scope  
17 of negligent and fraudulent activities addressed in said Consent Order  
18 dated April 13, 2011. Although, all of these transfers of the Deed of Trust  
19 have been previously submitted as exhibits numerous times by both the  
20 Defendant and the Plaintiff and are on the court’s records but may need to  
21 be pointed out again.  
22  
23

24  
25 Deutsche Bank National Trust has not proven as yet that they can do  
26 business in the State of California and in fact if they were eligible to do  
27  
28

1 business on the date of the alleged foreclosure July 19, 2009 and alleged  
2 selling and purchase at the alleged Trustee Sale thereafter.

3  
4 This answer to the Defendant's demurrer pursuant to Evidence Code sections 353  
5 and 400 et seq., Code of Civil Procedure section 430.10(b), and related decisional  
6 law.

7  
8 The grounds and reason for this answer is that the Unlawful Detainer Complaint,  
9 together with the publicly-filed "Deed of Trust" that is necessarily incorporated  
10 into it, is facially invalid because the Beneficiary did not have the power of sale.

11 Such irregularities should constitute sufficient grounds to set aside the entire non-  
12 judicial foreclosure process. Therefore, the Trustee's Deed After Sale should not  
13 be admitted as no lawful basis exists for its execution. Additionally, the Notice of  
14 Default, and Notice of Default Declaration should be excluded.

15  
16  
17 The failure of Defendant and/or Defendant's agent and/or foreclosing  
18 predecessor-in-interest to perform a condition precedent pursuant to Civil Code  
19 Section 2923.5 is fatal. The Notice of Default Declaration fails in several regards,  
20 (1) the language of the Notice does not comply with the statute because it does  
21 not set forth facts of how the statute was performed; (2) the only date of the  
22 Declaration is the date of execution which is July 9, 2009 signed by Emilee  
23 Pearce of IndyMac Mortgage Servicing 5 days prior to the Notice of Default  
24 which was signed on July 14, 2009 recorded only one day later on July 15, 2009,  
25 thus, thirty days did not pass from the date of execution of the Declaration and the  
26 date of recordation (See Exhibit A). AND in taking into consideration the 30 days  
27  
28

1 prior to execution of the Declaration dated July 07, 2009, signed by Emilee  
2 Pearce for IndyMac Mortgaging Serving please see (Exhibit B) which is a letter  
3 of notice from IndyMac Mortgage Services dated June 17, 2009 which would not  
4 have been received by Plaintiff until at least June 19, 2009 since it came from  
5 Kalamazoo, Michigan, clearly only 22 days prior to the Declaration being signed  
6 on July 07, 2009 stating it had been over 30 days since the borrower was  
7 contacted. As such, under Section 2923.5, the Notice of Default Declaration is  
8 void and could not support the recordation of the Notice of Default. Because the  
9 non-judicial foreclosure process is subject to strict scrutiny, and given the material  
10 failure of a condition precedent by Defendant and/or Defendant's agent and/or  
11 foreclosing predecessor-in-interest, the entire non-judicial foreclosure process is  
12 invalid. Therefore, the Trustee's Deed After Sale cannot be admitted into  
13 evidence, as no lawful foundation can be laid.

14  
15  
16  
17 The court's records for this case will show that Defendant DEUTSCHE BANK  
18 NATIONAL TRUST filed its Unlawful Detainer Complaint/Summons/Eviction  
19 on or about October 8, 2010. The apparent foreclosing beneficiary was  
20 OneWest Bank as of June 24, 2009 as recorded on October 23, 2009,  
21 SUBSTITUTION OF TRUSTEE. (See Exhibit C) and [See attachment to  
22 Unlawful Detainer Complaint entitled "Trustee's Deed Upon Sale."]  
23  
24

25 The court has power to consider and grant an objection to all evidence under  
26 Evidence Code sections 353 and 400 et seq. If no cause of action or defense is  
27 stated by the respective pleading, then no "factual issue" any longer exists, and  
28



1 therefore no evidence may be admitted on grounds of “relevance” under Evidence  
2 Code sections 400 et seq.

3  
4 5 WITKIN, Cal.Proc.3<sup>rd</sup> page 386, “Pleading” at §953. *See also* 6 WITKIN,  
5 Cal.Proc.3<sup>rd</sup> pages 571-573, “Proceedings Without Trial” at §§272-273.

6 According to 5 WITKIN, Cal.Proc.3<sup>rd</sup> page 340, “Pleading” at §899, a “general”  
7 demurrer concerns only the defense that the pleading does not state facts  
8 sufficient to constitute a cause of action or defense. That is precisely what  
9 Plaintiff contends here: the Unlawful Detainer Complaint fails to state a claim for  
10 which relief may be granted.  
11

12  
13 The Court must strictly enforce the technical requirements for a foreclosure. The  
14 harshness of non-judicial foreclosure has been recognized. “The exercise of the  
15 power of sale is a harsh method of foreclosing the rights of the grantor.” *Anderson*  
16 *v. Heart Federal Savings* (1989) 208 Cal.App.3d 202, 6 215, citing to *System Inv.*  
17 *Corporation v. Union Bank* (1971) 21 Cal.App.3d 137, 153. The statutory  
18 requirements are intended to protect the trustor from a wrongful or unfair loss of  
19 his property *Moeller v. Lien* (1994) 25 Cal.App.4th 822, 830; accord, *Hicks v.*  
20 *E.T. Legg & Associates* (2001) 89 Cal.App.4th 496, 503; *Lo Nguyen v. Calhoun*  
21 (6<sup>th</sup> District 2003) 105 Cal.App.4th 428, 440, and a valid foreclosure by the  
22 private power of sale requires *strict compliance* with the requirements of the  
23 statute. Miller & Starr, California Real Estate (3d ed.), Deeds of Trust and  
24 Mortgages, Chapter 10 §10.179; *Anderson v. Heart Federal Sav. & Loan Assn.*,  
25 208 Cal. App. 3d 202, 211 (3d Dist. 1989), reh’g denied and opinion modified,  
26  
27  
28

1 (Mar. 28, 1989); *Miller v. Cote* (4th Dist. 1982) 127 Cal. App. 3d 888, 894;  
2 *System Inv. Corp. v. Union Bank* (2d Dist. 1971) 21 Cal. App. 3d 137, 152-153;  
3 *Bisno v. Sax* (2d Dist. 1959) 175 Cal. App. 2d 714, 720.

4  
5 **It has been a cornerstone of foreclosure law that the statutory requirements,**  
6 **intending to protect the trustor from a wrongful or unfair loss of the**

7 **property, must be complied with strictly. (emphasis added)** Miller & Starr,  
8 California Real Estate (3d ed.), Deeds of Trust and Mortgages, Chapter 10

9 §10.182. “Close” compliance does not count. **As a result, any trustee’s sale**  
10 **based on a statutorily deficient Notice of Default is invalid (emphasis added).**

11 Miller & Starr, California Real Estate (3d ed.), Deeds of Trust and Mortgages,  
12 Chapter 10 §10.182; *Anderson v. Heart Federal Sav. & Loan Assn.* (3d Dist. 1989)  
13 208 Cal. App. 3d 202, 211, reh’g denied and opinion modified, (Mar. 28, 1989);  
14 *Miller v. Cote* (4th Dist. 1982) 127 Cal. App. 3d 888, 894; *System Inv. Corp. v.*  
15 *Union Bank* (2d Dist. 1971) 21 Cal. App. 3d 137, 152-153; *Saterstrom v. Glick*  
16 *Bros. Sash, Door & Mill Co.*(3d Dist. 1931) 118 Cal. App. 379.

17  
18  
19  
20 Additionally, any trustee’s sale based on a statutorily deficient Notice of Trustee  
21 Sale is invalid. *Anderson v. Heart Federal Sav. & Loan Assn.* (3d Dist. 1989) 11  
22 208 Cal.App. 3d 202, 211, reh’g denied and opinion modified, (Mar. 28, 1989).

23 The California Sixth District Court of Appeal observed, “Pursuing that policy [of  
24 judicial interpretation], the courts have fashioned rules to protect the debtor, one  
25 of them being that the notice of default will be strictly construed and must  
26 correctly set forth the amounts required to cure the default.” *Sweatt v. The*  
27  
28

1 *Foreclosure Co., Inc.* (1985 – 6th District) 166 Cal.App.3d 273 at 278, citing to  
2 *Miller v. Cote* (1982) 127 Cal.App.3d 888, 894 and *SystemInv. Corp. v. Union*  
3 *Bank* (1971) 21 Cal.App.3d 137, 152-153.

4  
5 The same reasoning applies even to a *notice* of a trustee’s sale. Courts will set  
6 aside a foreclosure sale when there has been fraud, when the sale has been  
7 improperly, unfairly, or unlawfully conducted, or when there has been such a  
8 mistake that it would be inequitable to let it stand. *Bank of America Nat. Trust &*  
9 *Savings Ass’n v. Reidy* (1940) 15 Cal. 2d 243, 248; *Whitman v. Transtate Title*  
10 *Co.*(4th Dist. 1985) 165 Cal. App. 3d 312, 322-323; *In re Worcester* (9th Cir.  
11 1987) 811 F.2d 1224, 1228. See also *Smith v. Williams* (1961) 55 Cal. 2d 617,  
12 621; *Stirton v. Pastor* (4<sup>th</sup> Dist. 1960) 177 Cal. App. 2d 232, 234; *Brown v. Busch*  
13 (3d Dist. 1957) 152 Cal.App. 2d 200, 203-204.  
14

15  
16 If somehow these foreclosing predecessor-in-interest can establish this standing,  
17 or right, to extrajudicially foreclose, still it should be prevented from pursuing this  
18 eviction action, because such an action, if successful, would result in a wrongful  
19 foreclosure, due to the predecessor-in-interest’s exercise of a non-existent  
20 extrajudicial power.  
21

22  
23 The foreclosing predecessor-in-interest simply did not have the right to foreclose  
24 under the subject trust deed, because the notice of default is facially invalid.  
25

26 The reason why the security instrument is not valid, is because it is *facially*  
27 void. A copy of the subject trust deed is a public record. Along with other  
28

1 transfer, substitution and new Deed of Trust is attached as Exhibit 1 – 5 of  
2 Defendants Demurrer. Further, the trueness of the copies are readily verifiable,  
3 since they are publicly-recorded documents. Clear as daylight, contact with the  
4 trustor 30 days prior to the notice was impossible. (There was no lender as MERS  
5 is not a lender) Defendant/Deutsche Bank National Trust/Regional Trustee  
6 Services Corp/OneWest Bank and/or foreclosing predecessor-in-interest received  
7 assignment of Deed of Trust on June 23, 2009 from MERS recorded as document  
8 2009-5065 in Glenn County Records. The notice of default was recorded July 15,  
9 2009 only 22 days after the assignment.  
10

11  
12 A trust deed adds a third party, of sorts, namely the beneficiary. It has been  
13 observed that a trust deed naming a purely fictitious person as beneficiary may be  
14 void. *Woodward v. McAdam* (1894), 101 Cal. 438. It has been held that a trust  
15 deed might be void for uncertainty, where the deed of trust does not name or  
16 describe any of the beneficiaries, but only classified them by reference to a  
17 common attribute. *Watkins v. Bryant* (1891), 91 Cal. 492. There seems to be no  
18 common-sense reason why the same principle should not apply to the designation  
19 of the grantee/ trustee, even were the law of deeds not generally applicable to trust  
20 deeds.  
21

22  
23  
24 Beneficiary did not have the power of sale. Such irregularities should constitute  
25 sufficient grounds to set aside the entire non-judicial foreclosure process.

26 Therefore, the Trustee's Deed After Sale should not be admitted as no lawful  
27  
28

1 basis exists for its execution. Additionally, the Notice of Default, and Notice of  
2 Default Declaration should be excluded.

3  
4 The failure of Defendant and/or Defendant's agent and/or foreclosing  
5 predecessor-in-interest to perform a condition precedent pursuant to Civil Code  
6 Section 2923.5 is fatal. The Notice of Default Declaration fails in several regards,  
7 (1) the language of the Notice does not comply with the statute because it does  
8 not set forth facts of how the statute was performed; (2) the only date of the  
9 Declaration is the date of execution July 9, 2009, prior to the Notice of Default  
10 which was recorded only six days later, thus, thirty days did not pass from the  
11 date of execution of the Declaration and the date of recordation. As such, under  
12 Section 2923.5, the Notice of Default Declaration is void and could not support  
13 the recordation of the Notice of Default. Because the non-judicial foreclosure  
14 process is subject to strict scrutiny, and given the material failure of a condition  
15 precedent by Defendant and/or Defendant's agent and/or foreclosing  
16 predecessor-in-interest, the entire non-judicial foreclosure process is  
17 invalid. Therefore, the Trustee's Deed After Sale cannot be admitted into  
18 evidence, as no lawful foundation can be laid.  
19  
20  
21

22 **In response to #3.** ) See Response #1 and #2 above  
23

24 **In response to #4.** ) The contract is still in question as the original Note has not  
25 been provided to the borrower or to the Court.  
26  
27  
28

1 **In response to #5.** ) Plaintiff concurs that Deutsche Bank National Trust was not  
2 involved in the initial contract but there are portions of said Contract that may  
3 show that Deutsche Bank National Trust could be a party to the “Breach” when  
4 the original note and complete investigation has been completed. The assignment  
5 of Deed of Trust is in question and OneWest Bank of which Deutsche Bank  
6 National Trust was nominated to oversee. The Office of Thrift Supervision is  
7 currently investigating the transfers of property by OneWest Bank, see attached  
8 Exhibit from OTS.  
9

10  
11 **In response to #6.** ) We do believe that a “Breach of Implied Covenant of Good  
12 Faith and Fair Dealing” is applicable in this case in reference to Deutsche Bank  
13 National Trust as they are the party as representatives of OneWest Bank who did  
14 not follow California procedure throughout the entire foreclosure process and did  
15 not in Good Faith and Fair Dealing advise or make an option available for  
16 Plaintiff when payments became delinquent as they also are representing  
17 themselves as a Trust for IndyMac Bank as well.  
18

19  
20 **In response to #7.** ) Unjust enrichment will be automatic should the Court not  
21 find that the entire foreclosure process has been violated by DBNT and those  
22 signers on the foreclosure documents and Deed of Trust transfers. There are still  
23 questions on why there are two separate loan number references between that  
24 stated on the Deed of Trust and that number stated on the IndyMac payment  
25 statements. Which loan is DNTB trying to collect on? They are not legally  
26 entitled to said property. The attorneys themselves are being paid to represent  
27  
28

1 DBNT and that is also an “unjust enrichment” being taken from the fraudulent  
2 acts.

3  
4 **In response to #8.** ) See above response to #1 and #2.

5  
6 **In response to #9.** ) See above response to #1 and #2.

7  
8 **CONCLUSION**

9 The Defendant’s entire case rests upon the “facial” or “on the public  
10 record” legitimacy of the extrajudicial foreclosure by itself and/or predecessor-in-  
11 interest. The foreclosure was facially void. The Defendant’s demurrer is null and  
12 void and should be overruled and the enjoined Unlawful Detainer Eviction Case  
13 No. 10NUD00302 should be dismissed, upon the court’s determination that no  
14 factual “issue” remains.  
15

16  
17 Plaintiff requests reimbursement from Deutsche Bank National Trust for the 4  
18 monthly payments made under duress from the month of April 2011 through  
19 August 2011 in the amount of \$750.00 each for a total of \$3,750.00 to be returned  
20 as soon as possible to prevent further harm and hardship.  
21

22 Not to burden the court but one more issue that is in need of notice is Defendant,  
23 in both cases, continues to submit exhibits which are clearly not part of either case  
24 and if unnoticed may lead to other people’s distress at some future time. The  
25 Exhibit in this case is the Page 4 of 4 of Defendant’s demurrer as Exhibit 5. This  
26 is clearly NOT a description of the property here in question and the parcel  
27  
28

1 number is different as being APN No: 408-262-03-00-1. It may be an attempt to  
2 either move mineral rights or possibly just an oversight on the part of the  
3 Defendant's representatives.

4  
5 It is ironic and a bit saddening that all this started with something called a "Deed  
6 of **TRUST**" (**emphasis added**).

7  
8  
9  
10 I do hereby declare under penalty of perjury that the above mentioned  
11 facts are true and complete to the best of my knowledge and ability.

12  
13  
14  
15 DATED: \_\_\_\_\_, 2011

16  
17 \_\_\_\_\_  
18 Sarina Nelson – Plaintiff

19 In Propria Persona  
20  
21  
22  
23  
24  
25  
26  
27  
28