

NO. _____

IN THE
Supreme Court of the United States

IQBAL S. RANDHAWA,

v.

Petitioner,

BANK OF NEW YORK MELLON, FKA
Bank of New York, Successor to JPMorgan
Chase Bank, NA, as trustee, on behalf of the holders
of the Structured Asset Mortgage Investment II Inc.,
Bear Stearns Alt-A Trust, Mortgage Pass-Through
Certificates, Series 2004-12,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

APPENDIX

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NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

AUG 13 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

IQBAL S. RANDHAWA,
Plaintiff-Appellant,
v.

BANK OF NEW YORK MELLON, FKA
Bank of New York, Successor to JPMorgan
Chase Bank, NA, as trustee, on behalf of the
holders of the Structured Asset Mortgage
Investment II Inc., Bear Stearns Alt-A Trust,
Mortgage Pass-Through Certificates, Series
2004-12,

Defendant-Appellee.

No. 19-15926
D.C. No.
2:18-cv-02244-JAM-AC

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
John A. Mendez, District Judge, Presiding

Submitted August 4, 2020**
San Francisco, California

Before: THOMAS, Chief Judge, and HAWKINS and McKEOWN, Circuit
Judges.

* This disposition is not appropriate for publication and is not precedent
except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision
without oral argument. *See* Fed. R. App. P. 34(a)(2).

Iqbal S. Randhawa appeals the district court’s denial of leave to amend his Truth in Lending Act (“TILA”) complaint against the Bank of New York Mellon. We have jurisdiction under 28 U.S.C. § 1291. Reviewing the denial for abuse of discretion, we affirm.

The district court properly dismissed Randhawa’s suit as time-barred, noting that the loan in question “was consummated in 2004,” that Randhawa “recorded the Notice of Rescission in 2005, and the TILA cause of action arose when the bank failed to take any action to wind up the loan within 20 days of receiving plaintiff’s notice of rescission.” The statute of limitations on a TILA rescission enforcement claim is borrowed from analogous state contract law, *Hoang v. Bank of Am., N.A.*, 910 F.3d 1096, 1101 (9th Cir. 2018), in this case four years, Cal. Civ. Proc. Code § 337, which expired long before Randhawa filed this action.

Randhawa does not challenge this determination, but argues the district court should have permitted him to amend his TILA complaint to include a quiet title claim. The statute of limitations for quiet title depends upon the “underlying theory of relief,” *Muktarian v. Barmby*, 407 P.2d 659, 661 (Cal. 1965), and as the district court noted, the same logic that forecloses his TILA claims applies here. The quiet title claim in Randhawa’s proposed amended complaint is premised on the alleged fraud that led him to transfer his deed in 2004. In California, the statute of limitations for fraud is three years, *Platt Elec. Supply, Inc. v. EOIFF Elec., Inc.*,

522 F.3d 1049, 1054 (9th Cir. 2008) (citing Cal. Civ. Proc. Code § 338(d)), and Randhawa's claim is thus time-barred. The district court did not abuse its discretion in refusing to grant him leave to amend. *See Graham-Sult v. Clainos*, 756 F.3d 724, 748 (9th Cir. 2014).

AFFIRMED.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

IQBAL S. RANDHAWA,

No. 2:18-cv-02244 JAM AC PS

Plaintiff,

v.

FINDINGS AND RECOMMENDATIONS

BANK OF NEW YORK MELLON,

Defendants.

Plaintiff is proceeding in this matter pro se following the withdraw of counsel (ECF No. 12), and pre-trial proceedings are accordingly referred to the magistrate judge pursuant to Local Rule 302(c)(21). Defendant's motion to dismiss (ECF No. 16) came on for hearing on March 20, 2019. ECF No. 27. Because the applicable statute of limitations bars this case in its entirety, defendant's motion must be GRANTED.

I. BACKGROUND

The complaint alleges as follows. Plaintiff owned an encumbered home at 681 Dynasty Drive, Fairfield, California, 95534, where he lived. ECF No. 1 at 2. In 2001, plaintiff became unable to make regular payments on his mortgages, and the property became subject to foreclosure. Id. at 3. On or about July 23, 2004, plaintiff was solicited by Phil Elauria (“Elauria”) who represented that he was an agent and manager of the Princess Properties & Associates Acquisitions & Holdings, LLC (“Princess Properties”). Id. Elauria said that he and

1 his company had the ability to “save” plaintiff from “losing his home” at the foreclosure sale.
2 Elauria proposed an arrangement in which plaintiff would transfer title to his home to Princess
3 Properties for 60 days, during which plaintiff could remain in the house and get back on his feet
4 financially, after which the company would transfer the property back to plaintiff. Id. In reliance
5 on these representations, plaintiff signed a Grant Deed transferring the title of the property to
6 Princess Properties; this deed was recorded on August 4, 2004. Id. On September 10, 2004,
7 plaintiff signed a Promissory Note for \$750,000 in which Princess Properties was the lender and
8 plaintiff and his spouse were borrowers. Id. at 3-4.

9 Plaintiff alleges that he was fraudulently induced to enter the transaction with Princess
10 Properties. Id. at 4. Princess Properties did not disclose that prior to the September 10, 2004
11 transaction, it had already caused Walter J. Aster (“Aster”), owner of Princess Properties’
12 successor “Real Opportunity” to execute two deeds of trust on the Subject Property. Id. Aster
13 acknowledged that he was paid \$5,000 by Princess Properties for allowing Princess Properties to
14 use his name and credit to obtain two purchase money mortgages from Sierra Pacific Mortgage
15 Company, predecessor to defendant Bank of New York Mellon (“BONY”), falsely representing
16 that Aster intended to live in the home. Id. On or about January 31, 2005, Real Opportunity and
17 Aster recorded a Grant Deed transferring title to the property from Princess Properties to Real
18 Opportunity, and in early 2005, began demanding plaintiff start making payments to Real
19 Opportunity, attention Walter J. Aster. Id. at 5.

20 Alarmed by the series of events, plaintiff sent a Notice of Rescission pursuant to Civil
21 Code § 1695 and his rights under the Truth in Lending Act to Real Opportunity Investments on or
22 about August 31, 2005. Id. at 6. The Notice of Rescission was recorded at the Solano County
23 Recorders Office on September 1, 2005. BONY was aware of the Notice of Rescission and made
24 an unsuccessful effort to expunge the Notice in a prior state court case, Real Opportunity
25 Investments LLC v. Randhawa (“ROI v. Randhawa”). Id. In that case, BONY filed a cross-
26 complaint seeking declaratory relief, equitable subrogation, judicial foreclosure, and quiet title.
27 Id. The court granted BONY summary judgment on plaintiff’s claims against it, but denied
28 summary judgment to BONY on its cross complaint. Id. at 7. BONY subsequently dismissed its

1 cross-complaint. Id. On or about April 17, 2015, BONY recorded a Trustee's Deed Upon Sale,
2 indicating that it was the new equity purchaser and had acquired ownership and title to the
3 property. Id. On May 18, 2015, BONY served plaintiff with an unlawful detainer to evict him.
4 Id.

5 Plaintiff filed his complaint on August 17, 2018. ECF No. 1. Plaintiff brings two claims:
6 (1) "Rescission under federal law" pursuant to the Truth in Lending Act ("TILA"), and (2)
7 "Violation of 15 U.S.C. § 1635," a provision of TILA. Id. at 7-8. Plaintiff was initially
8 represented by counsel, but counsel's withdrawal was approved on October 17, 2018. ECF No.
9 12. Defendant moved to dismiss on November 30, 2018. ECF No. 16. Plaintiff sought an
10 extension of time to respond (ECF No. 17) which the court granted (ECF No. 19). Plaintiff filed
11 an opposition to defendant's motion to dismiss, which includes a request to amend his complaint
12 to include a fraud claim. ECF No. 23.

13 **II. MOTION TO DISMISS**

14 Defendant seeks to dismiss plaintiff's case with prejudice and without leave to amend
15 pursuant to Fed. R. Civ. P. 12(b)(6) because (1) plaintiff's complaint is barred by the doctrine of
16 res judicata; (2) TILA governs creditors, and defendant was never a creditor as to plaintiff; and
17 (3) plaintiff's claims are time-barred. ECF No. 16-1 at 2.

18 **A. Standards under Rule 12(b)(6)**

19 "The purpose of a motion to dismiss pursuant to Rule 12(b)(6) is to test the legal
20 sufficiency of the complaint." N. Star Int'l v. Ariz. Corp. Comm'n, 720 F.2d 578, 581 (9th Cir.
21 1983). "Dismissal can be based on the lack of a cognizable legal theory or the absence of
22 sufficient facts alleged under a cognizable legal theory." Balistreri v. Pacifica Police Dep't., 901
23 F.2d 696, 699 (9th Cir. 1990).

24 In order to survive dismissal for failure to state a claim, a complaint must contain more
25 than a "formulaic recitation of the elements of a cause of action;" it must contain factual
26 allegations sufficient to "raise a right to relief above the speculative level." Bell Atlantic Corp. v.
27 Twombly, 550 U.S. 544, 555 (2007). It is insufficient for the pleading to contain a statement of
28 facts that "merely creates a suspicion" that the pleader might have a legally cognizable right of

1 action. Id. (quoting 5 C. Wright & A. Miller, Federal Practice and Procedure § 1216, pp. 235-35
2 (3d ed. 2004)). Rather, the complaint “must contain sufficient factual matter, accepted as true, to
3 ‘state a claim to relief that is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
4 (quoting Twombly, 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads
5 factual content that allows the court to draw the reasonable inference that the defendant is liable
6 for the misconduct alleged.” Id.

7 In reviewing a complaint under this standard, the court “must accept as true all of the
8 factual allegations contained in the complaint,” construe those allegations in the light most
9 favorable to the plaintiff, and resolve all doubts in the plaintiffs’ favor. See Erickson v. Pardus,
10 551 U.S. 89, 94 (2007); Von Saher v. Norton Simon Museum of Art at Pasadena, 592 F.3d 954,
11 960 (9th Cir. 2010), cert. denied, 131 S. Ct. 3055 (2011); Hebbe v. Pliler, 627 F.3d 338, 340 (9th
12 Cir. 2010). However, the court need not accept as true legal conclusions cast in the form of
13 factual allegations, or allegations that contradict matters properly subject to judicial notice. See
14 Western Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981); Sprewell v. Golden State
15 Warriors, 266 F.3d 979, 988 (9th Cir.), as amended, 275 F.3d 1187 (2001).

16 Pro se pleadings are held to a less stringent standard than those drafted by lawyers.
17 Haines v. Kerner, 404 U.S. 519, 520 (1972). Pro se complaints are construed liberally and may
18 only be dismissed if it appears beyond doubt that the plaintiff can prove no set of facts in support
19 of his claim which would entitle him to relief. Nordstrom v. Ryan, 762 F.3d 903, 908 (9th Cir.
20 2014). A pro se litigant is entitled to notice of the deficiencies in the complaint and an
21 opportunity to amend, unless the complaint’s deficiencies could not be cured by amendment. See
22 Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987).

23 B. The Applicable Statute of Limitations Bars All Claims

24 Although defendant raises three grounds for dismissal with prejudice, plaintiff’s claims
25 are clearly time-barred and therefore must be dismissed without leave to amend. Accordingly,
26 the undersigned does not reach the alternative grounds for dismissal forwarded by defendant.

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1 *1. Statute of Limitations under TILA*

2 Plaintiff's causes of action in the pending complaint against defendant are both TILA
3 claims, and they are both barred by the statute of limitations. TILA, the Truth in Lending Act,
4 separately provides a damages remedy and a right to rescind a loan agreement when the lender's
5 disclosure statement is statutorily inadequate. Truth in Lending Act §§ 125(a), 130; 15 U.S.C. §§
6 1635(a), 1640(a); Ljepava v. M. L. S. C. Props., 511 F.2d 935, 940-41 (9th Cir. 1975); Semar v.
7 PlatteValley Fed. Sav. & Loan Ass'n, 791 F.2d 699, 704 (9th Cir. 1986). Plaintiff argues that no
8 statute of limitations applies to his case because does not seeks damages, but instead brings a
9 recession claim pursuant to § 1635 of TILA, seeking only injunctive relief. Indeed, Counts One
10 and Two of the Complaint both seek to enforce rescission under § 1635, and thus appear to be
11 duplicative.

12 Plaintiff is correct that a claim for damages under 15 U.S.C. § 1640(e) is subject to a
13 different time limit than a rescission claim. Section 1640 expressly provides that an action
14 alleging a TILA violation must proceed "within one year from the date of the occurrence of the
15 violation." The statutory text of § 1635, in contrast, does not include a limitations provision.
16 Plaintiff argues that this statutory silence means no statute of limitations applies to a § 1635
17 claim. That is not correct. The Ninth Circuit has squarely held that held that TILA rescission
18 enforcement claims are subject to the statute of limitations provided by state law for contract
19 actions. Hoang v. Bank of Am., N.A., 910 F.3d 1096, 1101 (9th Cir. 2018).

20 Plaintiff relies on Jesinoski v. Countrywide Home Loans, Inc., 135 S. Ct. 790, 792 (2015),
21 which holds that a notice of rescission under TILA is effective upon its timely issuance, and that
22 the three-year deadline established by § 1635(f) governs only the timeliness of the rescission
23 notice from the borrower to the creditor and is not a deadline for suit. Although the Supreme
24 Court reversed a lower court ruling that a rescission action was time-barred, the error that the
25 Court identified lay in treating the rescission notice deadline as a statute of limitations. Jesinoski
26 neither addressed nor decided the distinct question whether there is an extra-textual source for a
27 statute of limitations applicable to suits seeking the equitable enforce of rescission.

28 ///

1 Following Jesinoski, the Ninth Circuit addressed this question. In Hoang, supra, the Ninth
2 Circuit held that “TILA does not provide a statute of limitations for rescission enforcement
3 claims. Accordingly, our precedent requires that we borrow from analogous [state contract] law.”
4 910 F.3d at 1101. The Ninth Circuit expressly rejected the “argument that no statute of
5 limitations applies to TILA rescission enforcement claims.” Id. at 1102. California provides a
6 four-year statute of limitations for contract actions. Cal. Civ. Proc. Code § 337. Accordingly,
7 plaintiff’s claims are subject to a four-year statute of limitations.

8 The loan at issue here was consummated in 2004. Complaint, Ex. C. Plaintiff recorded
9 the Notice of Rescission in 2005, and the TILA cause of action arose when the bank failed to take
10 any action to wind up the loan within 20 days of receiving plaintiff’s notice of rescission. 15
11 U.S.C. 1635(b); Hoang, 910 F.3d at 1102. The complaint in this case was filed more than ten
12 years after the loan transaction at issue. Plaintiff’s TILA claims thus fall far outside the
13 applicable statute of limitations, and must be dismissed as untimely.

14 2. *Any Putative Fraud Claim is Also Untimely*

15 Plaintiff contends that the allegations of his Complaint support a claim for “fraud and
16 fraud in the inducement,” although he has not expressly asserted a cause of action for fraud. ECF
17 No. 23 at 4. To the extent the complaint attempts to state a claim for fraud, it is time-barred.

18 California Code of Civil Procedure § 338(d) sets a three-year limitations period for “[a]n
19 action for relief on the ground of fraud or mistake. The cause of action in that case is not deemed
20 to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud or
21 mistake.” In general, “[a] cause of action accrues when the claim is complete with all of its
22 elements.” Slovensky v. Friedman, 142 Cal.App.4th 1518, 1528 (2006), as modified (citation
23 omitted). “Although this ordinarily occurs on the date of the plaintiff’s injury, accrual is
24 postponed until the plaintiff either discovers or has reason to discover the existence of a claim,
25 i.e., at least has reason to suspect a factual basis for its elements.” Id. at 1528–29 (citations
26 omitted). “Plaintiffs are required to conduct a reasonable investigation after becoming aware of
27 an injury, and are charged with knowledge of the information that would have been revealed by
28 such an investigation.” Id. at 1529 (citation and alteration omitted). “So long as there is a

1 reasonable ground for suspicion, the plaintiff must go out and find the facts; she cannot wait for
2 the facts to find her.” Id. (citation omitted).

3 The allegations on which plaintiff relies for his putative fraud claim, see ECF No. 23 at 4,
4 involve false representations made by Phil Elauria and Princess Properties to plaintiff in 2004,
5 and the knowing acceptance of the fraudulent Aster loan application by BONY’s predecessor
6 financial institution. ECF No. 1 at ¶¶ 10, 12, 16. Construing the putative fraud claim liberally,
7 the underlying events all occurred in 2004 and 2005. Even if plaintiff were to argue that his claim
8 against BONY could not have been discovered prior to BONY’s active involvement in the matter,
9 the claim would be untimely because plaintiff has been litigating against BONY regarding the
10 subject property since 2012. The most recent event alleged in the complaint (and not alleged to
11 have been independently fraudulent) is BONY’s service of an unlawful detainer on May 18,
12 2015. ECF No. 1 at ¶ 29. Plaintiff’s complaint was filed in this court more than three years
13 thereafter. There is no theory under which a fraud claim could be timely.

14 3. *Leave to Amend Would Be Futile*

15 Although pro se plaintiffs are ordinarily given an opportunity to amend, Noll, 809 F.2d at
16 1448, amendment in this case would be futile because untimeliness is not a problem that can be
17 solved by changes to the pleadings. There are no additional facts or alternative theories that could
18 be added to the Complaint to make the TILA claims timely. Amendment to expressly assert a
19 fraud claim would also be futile, because such a claim is also time-barred. Accordingly, leave to
20 amend is not appropriate.

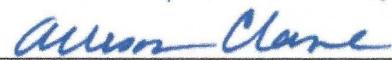
21 **CONCLUSION**

22 For the reasons explained above, it is hereby RECOMMENDED that defendant’s motion
23 to dismiss (ECF No. 16) be GRANTED and that this case be DISMISSED with prejudice.

24 These findings and recommendations are submitted to the United States District Judge
25 assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one (21)
26 days after being served with these findings and recommendations, any party may file written
27 objections with the court. Such document should be captioned “Objections to Magistrate Judge’s
28 Findings and Recommendations.” Local Rule 304(d). Failure to file objections within the

1 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951
2 F.2d 1153 (9th Cir. 1991).

3 DATED: March 21, 2019

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5 ALLISON CLAIRE
6 UNITED STATES MAGISTRATE JUDGE

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UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

IQBAL S. RANDHAWA,

Plaintiff,

v.

BANK OF NEW YORK MELLON,

Defendant.

No. 2:18-cv-2244 JAM AC PS

ORDER

Plaintiff is proceeding in this matter pro se, following the withdrawal of counsel. ECF No. 12. Accordingly, pre-trial proceedings were referred to a United States Magistrate Judge pursuant to Local Rule 302(c)(21).

On March 21, 2019, the magistrate judge filed findings and recommendations herein which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within twenty-one days. ECF No. 28. Plaintiff has filed objections to the findings and recommendations, albeit one day after the filing deadline. ECF No. 29.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this court has conducted a de novo review of this case. Having carefully reviewed the entire file, including plaintiff's objections, the court finds the findings and recommendations to be supported by the record and by proper analysis.

1 Accordingly, IT IS HEREBY ORDERED that:

2 1. The findings and recommendations filed March 21, 2019, are adopted in full; and

3 2. Defendant's motion to dismiss (ECF No. 16) is GRANTED, and this case is

4 DISMISSED with prejudice.

DATED: April 17, 2019

John A. Mendez

UNITED STATES DISTRICT COURT JUDGE

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

SEP 29 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

IQBAL S. RANDHAWA,

Plaintiff-Appellant,

v.

BANK OF NEW YORK MELLON, FKA
Bank of New York, Successor to JPMorgan
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Defendant-Appellee.

No. 19-15926

D.C. No.
2:18-cv-02244-JAM-AC
Eastern District of California,
Sacramento

ORDER

Before: THOMAS, Chief Judge, and HAWKINS and McKEOWN, Circuit
Judges.

The panel votes to deny the petition for rehearing (Dkt. 28). The full court
has been advised of the petition for rehearing and rehearing en banc and no judge
has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.
The petition for panel rehearing and the petition for rehearing en banc are
DENIED.

15 U.S.C.A. § 1635. Right of rescission as to certain transactions

(a) Disclosure of obligor's right to rescind

Except as otherwise provided in this section, in the case of any consumer credit transaction (including opening or increasing the credit limit for an open end credit plan) in which a security interest, including any such interest arising by operation of law, is or will be retained or acquired in any property which is used as the principal dwelling of the person to whom credit is extended, the obligor shall have the right to rescind the transaction until midnight of the third business day following the consummation of the transaction or the delivery of the information and rescission forms required under this section together with a statement containing the material disclosures required under this subchapter, whichever is later, by notifying the creditor, in accordance with regulations of the Bureau, of his intention to do so. The creditor shall clearly and conspicuously disclose, in accordance with regulations of the Bureau, to any obligor in a transaction subject to this section the rights of the obligor under this section. The creditor shall also provide, in accordance with regulations of the Bureau, appropriate forms for the obligor to exercise his right to rescind any transaction subject to this section.

(b) Return of money or property following rescission

When an obligor exercises his right to rescind under subsection (a), he is not liable for any finance or other charge, and any security interest given by the obligor, including any such interest arising by operation of law, becomes void upon such a rescission. Within 20 days after receipt of a notice of rescission, the creditor shall return to the obligor any money or property given as earnest money, downpayment, or otherwise, and shall take any action necessary or appropriate to reflect the termination of any security interest created under the transaction. If the creditor has delivered any property to the obligor, the obligor may retain possession of it. Upon the performance of the creditor's obligations under this section, the obligor shall tender the property to the creditor, except that if return of the property in kind would be impracticable or inequitable, the obligor shall tender its reasonable value. Tender shall be made at the location of the property or at the residence of the obligor, at the option of the obligor. If the creditor does not take possession of the property within 20 days after tender by the obligor, ownership of the property vests in the obligor without obligation on his part to pay for it. The procedures prescribed by this subsection shall apply except when otherwise ordered by a court.

(c) Rebuttable presumption of delivery of required disclosures

Notwithstanding any rule of evidence, written acknowledgment of receipt of any disclosures required under this subchapter by a person to whom information, forms, and a statement is required to be given pursuant to this section does no more than create a rebuttable presumption of delivery thereof.

(d) Modification and waiver of rights

The Bureau may, if it finds that such action is necessary in order to permit homeowners to meet bona fide personal financial emergencies, prescribe regulations authorizing the modification or waiver of any rights created under this section to the extent and under the circumstances set forth in those regulations.

(e) Exempted transactions; reapplication of provisions

This section does not apply to--

- (1) a residential mortgage transaction as defined in [section 1602\(w\)¹](#) of this title;
- (2) a transaction which constitutes a refinancing or consolidation (with no new advances) of the principal balance then due and any accrued and unpaid finance charges of an existing extension of credit by the same creditor secured by an interest in the same property;
- (3) a transaction in which an agency of a State is the creditor; or
- (4) advances under a preexisting open end credit plan if a security interest has already been retained or acquired and such advances are in accordance with a previously established credit limit for such plan.

(f) Time limit for exercise of right

An obligor's right of rescission shall expire three years after the date of consummation of the transaction or upon the sale of the property, whichever occurs first, notwithstanding the fact that the information and forms required under this section or any other disclosures required under this part have not been delivered to the obligor, except that if (1) any agency empowered to enforce the provisions of this subchapter institutes a proceeding to enforce the provisions of this section within three years after the date of consummation of the transaction, (2) such agency finds a violation of this section, and (3) the obligor's right to rescind is based in whole or in part on any matter involved in such proceeding, then the obligor's right of rescission shall expire three years after the date of consummation of the transaction or upon the earlier sale of the property, or upon the expiration of one year following the conclusion of the proceeding, or any judicial review or period for judicial review thereof, whichever is later.

(g) Additional relief

In any action in which it is determined that a creditor has violated this section, in addition to rescission the court may award relief under [section 1640](#) of this title for violations of this subchapter not relating to the right to rescind.

(h) Limitation on rescission

An obligor shall have no rescission rights arising solely from the form of written notice used by the creditor to inform the obligor of the rights of the obligor under this section, if the creditor provided the obligor the appropriate form of written notice published and adopted by the Bureau, or a comparable written notice of the rights of the obligor, that was properly completed by the creditor, and otherwise complied with all other requirements of this section regarding notice.

(i) Rescission rights in foreclosure

(1) In general

Notwithstanding [section 1649](#) of this title, and subject to the time period provided in subsection (f), in addition to any other right of rescission available under this section for a transaction, after the initiation of any judicial or nonjudicial foreclosure process on the primary dwelling of an obligor securing an extension of credit, the obligor shall have a right to rescind the transaction equivalent to other rescission rights provided by this section, if--

(A) a mortgage broker fee is not included in the finance charge in accordance with the laws and regulations in effect at the time the consumer credit transaction was consummated; or

(B) the form of notice of rescission for the transaction is not the appropriate form of written notice published and adopted by the Bureau or a comparable written notice, and otherwise complied with all the requirements of this section regarding notice.

(2) Tolerance for disclosures

Notwithstanding [section 1605\(f\)](#) of this title, and subject to the time period provided in subsection (f), for the purposes of exercising any rescission rights after the initiation of any judicial or nonjudicial foreclosure process on the principal dwelling of the obligor securing an extension of credit, the disclosure of the finance charge and other disclosures affected by any finance charge shall be treated as being accurate for purposes of this section if the amount disclosed as the finance charge does not vary from the actual finance charge by more than \$35 or is greater than the amount required to be disclosed under this subchapter.

(3) Right of recoupment under State law

Nothing in this subsection affects a consumer's right of rescission in recoupment under State law.

(4) Applicability

This subsection shall apply to all consumer credit transactions in existence or consummated on or after September 30, 1995.

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FILED

FEB 21 2019

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY _____ DEPUTY CLERK

6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF CALIFORNIA (SACRAMENTO DIVISION)
8

9 IQBAL SINGH RANDHAWA

No. CASE NO.: 2:18-CV-02244-JAM-AC

10 Plaintiff,

FIRST AMENDED COMPLAINT

11 v.
12 **PRINCESS PROPERTIES &**
13 **ASSOCIATES ACQUISITIONS &**
14 **HOLDINGS, LLC; SIERRA PACIFIC**
15 **MORTGAGE CO. INC; THE BANK**
16 **OF NEW YORK MELLON F/K/A THE**
17 **BANKOF NEW YORK, SUCCESSOR**
18 **TO JPMORGAN CHASE BANK, NA,**
19 **AS TRUSTEE, ON BEHALF OF THE**
20 **HOLDERS OF THE STRUCTURED**
21 **ASSET MORTGAGE INVESTMENT II**
22 **INC., BEAR STEARNS ALT-A TRUST,**
23 **MORTGAGE PASS- THROUGH**
24 **CERTIFICATES, SERIES 2004-12;**
25 **MERSCORP HOLDINGS INC.;**
26 **MORTGAGE REGISTRATION**
27 **SYSTEMS, INC.; all persons unknown**
28 **claiming any legal or equitable right,**
29 **title, estate, lien or interest, in the**
30 **property described in this First**
31 **Amended Complaint adverse to the**
32 **Plaintiff's title or any cloud on the**
33 **Plaintiff's title; and Does 1-20**

34 Defendant.

26 **FIRST AMENDED COMPLAINT**

27 Plaintiff alleges that:

28

PARTIES

1. Plaintiff, IQBAL SINGH RANDHAWA (“Plaintiff” or “Randhawa”) is, and at all times relevant to this First Amended Complaint was, an individual residing in Solano County, California, at the property commonly known as 681 Dynasty Drive, Fairfield, California 95534 (the “Property”). The legal description of the Property is attached to this First Amended Complaint as **Exhibit “A”** and incorporated herein by this reference.

2. On information and belief, Plaintiff alleges that Defendant PRINCESS PROPERTIES & ASSOCIATES ACQUITIONS & HOLDINGS, LLC (“Princess”) was, at all times relevant herein, a Limited Liability Company formed under the laws of CA with a principal address of 37481 Maple Street, Suite L, Fremont, CA 94536.

a. Princess and Sierra (see below) became involved when their representatives induced the Plaintiff to execute documentation that led to the temporary loss of legal title to the subject property, but not the equitable title or right to possession.

b. False representations were made by certain defendants described above including or on behalf of Princess and Sierra upon which Plaintiff reasonably relied to his detriment, to wit: that the intervention of Princess and Sierra would result in a modification of the original loan agreement and/or the currently claimed encumbrance upon his property as described above.

c. Neither BONY nor Chase were parties to the false representations made to Plaintiff. However, both BONY and Chase knew, must have known or should have known of the scheme and both knew that neither BONY nor the Holders had any legal claim or basis for foreclosure to wit: neither BONY nor the Holders (nor any implied trust) was at risk of monetary loss arising from payments or non-payments of the subject

3. On information and belief, Plaintiff alleges Walter Aster (“Aster”) was, at all times relevant herein, acting for his own benefit and/or was an agent, servant, manager, owner and/or

1 employee of Real Opportunity Investments, LLC. Aster is not named as a Defendant because he
2 filed for Bankruptcy Protection.

3 4. On information and belief, Plaintiff alleges that Defendant, SIERRA PACIFIC
4 MORTGAGE COMPANY, INC. ("Sierra") was, at all times relevant herein, a corporation
5 organized under the laws of the State of CA.

6 5. On information and belief, Plaintiff alleges that FREMONT INVESTMENT AND
7 LOAN ("Fremont") may have been, at all times relevant herein the fictitious name used by FGC
8 Commercial Mortgage Finance a Corporation organized under the laws of the State of CA.
9 (Fremont) Fremont's mortgage-servicing rights were sold to Litton Loan Servicing (owned at the
10 time by Goldman Sachs, an investment bank, now owned by Ocwen). Fremont is not named as
11 Defendant because, upon information and belief, it is defunct. No sale of loans by Fremont was
12 ever announced, nor did Fremont report any loans as assets. Acting solely as an "originator, for a
13 service fee, Fremont was named as Payee on the subject note and "lender" on the mortgage.

14 16 a. At all times material hereto Plaintiff relied upon the false disclosures at the
15 asserted closing of the loan transaction with Fremont and was therefore unaware of the identity of
16 the party who funded his loan (most likely Bear Stearns) nor of any successors to said party.

17 20 b. Plaintiff was further unaware that the debt had been sold multiple times to multiple
18 parties without recourse leaving both the existence and ownership of the debt, legally or
19 equitably, in confusion and doubt.

21 24 6. On information and belief, Plaintiff alleges that Defendant THE BANK OF NEW
22 YORK MELLON F/K/A THE BANK OF NEW YORK, (BONY) is asserted to be a
23 SUCCESSOR TO JPMORGAN CHASE BANK, NA, (Chase) AS TRUSTEE. BONY has
24 appeared exclusively as a representative, "ON BEHALF OF THE HOLDERS (Holders) OF THE
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1 STRUCTURED ASSET MORTGAGE INVESTMENT II INC., BEAR STEARNS ALT-A
2 TRUST, MORTGAGE PASS- THROUGH CERTIFICATES, SERIES 2004-12" BONY
3 (Certificates) is, and at all times relevant herein was, a commercial bank chartered under the laws
4 of the state of New York with its principal place of business in New York City, New York.
5

6 a. With respect to the subject debt, note or mortgage, BONY has performed no
7 functions as a commercial bank and was upon information and belief named as
8 "Trustee" of an implied but unstated Trust under an agreement by which BONY
9 received fees for use of its name in foreclosure actions.

10 b. With respect to the subject debt, note or mortgage, BONY has performed no
11 administrative functions as a trustee and was prohibited from doing so under the
12 agreement by which it gave permission for its name to be used.

13 c. With respect to the subject debt, note or mortgage, no trust has acquired the debt,
14 note, mortgage or servicing rights. In addition, neither the Holders nor BONY ever
15 acquired the subject debt, note, mortgage or servicing rights.

16 d. With respect to the "certificates," the "holders" acquired no right, title or interest in
17 the debt, note or mortgage.

18 e. Bear Stearns (BS) was an investment bank, now defunct and/or acquired by
19 Chase. BS issued the Certificates to investors. Upon information and belief no
20 purchase or sale of the subject debt, note and mortgage was ever transacted between
21 the Holders (investors) and Bear Stearns. Upon information and belief, at the time of
22 the demise of BS and subsequent acquisition of its remainder by Chase, the subject
23 loan was not an asset of BS nor of Chase, nor was it an asset of BONY or any trust,
24 implied or otherwise.

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1 7. Defendant MERSCORP HOLDINGS, INC., Inc. ("MERSCORP") is a Delaware
2 corporation with its principal place of business in Reston, Virginia. MERSCORP is owned by
3 many of the most significant stakeholders in the mortgage lending industry, including actual
4 lenders, mortgage originating companies and servicing companies (e.g., Bank of America, N.A.,
5 Chase Home Mortgage Corporation of the Southeast, Wells Fargo Bank, N.A., CitiMortgage,
6 Inc., CHASE NA Residential Funding Corporation), government sponsored entities (e.g., the
7 Federal National Mortgage Association, known as "Fannie Mae," and the Federal Home Loan
8 Mortgage Corporation, known as "Freddie Mac"), mortgage insurance and title companies (e.g.,
9 First American Title Insurance Corporation and PMI Mortgage Insurance Company), and the
10 Mortgage Bankers Association. MERSCORP owns and operates an electronic registry system
11 that purports to track the ownership and servicing rights of its members in residential mortgage
12 loans ("the MERS System"). There are over 3,000 members in MERSCORP, including
13
14 Defendant BONY.

15 8. Defendant MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.,
16 ("MERS, Inc.") is a wholly owned subsidiary of MERSCORP. MERS is a Delaware corporation
17 with its principal place of business located in Reston, Virginia. MERS' name is used when it is
18 asserted to be the nominee of the party asserted as mortgagee or the nominee of the party asserted
19 as beneficiary in the public land records for loans that are input ("registered") on the MERS
20 System. Such is the case at bar.

21 a. As part of its business plan, MERS always disclaims all right, title or interest in any
22 money, debt, note or deed of trust relating to any asserted loan agreement. It neither consents to
23 nor is a party to any documents that use the MERS name. The disclaimer is apparent on its
24 website, on all agreements between MERS and its owners/members and in all court documents
25 filed "on behalf" of MERS.

1 9. In all cases and all events MERS is asserted on documents to be a “Nominee” for a
2 party named on a mortgage deed or deed of trust as “lender” (i.e., the originator). This is
3 permissible in some jurisdictions when construed as creating a narrow agency relationship. It is
4 not a lender, servicer or otherwise directly involved in any monetary transactions nor accounting
5 or collection involving any loans and is not a financial institution of any kind. However, entries
6 on the MERS data systems are used to support collection, servicing and enforcement claims.
7 MERS is also often asserted to have an agency relationship with parties claiming to be either
8 successors to the originator (“lender”) or successors in interest to the originator (“lender”) as to
9 the mortgage or deed of trust, the note or both. Such is the case at bar. MERSCORP, MERS Inc.
10 and the MERS System are referred to herein as “MERS.”

12 a. At the time of origination of the subject loan agreement, MERS was named as
13 “nominee” for Fremont. None of the parties named above were ever successors in interest to
14 Fremont, except for certain servicing rights, which may have included administration of the
15 subject debt, note and mortgage on behalf of Fremont, whose only interest was servicing the debt
16 and who never owned the debt.

18 10. Defendants herein named as “all persons unknown, claiming any legal or equitable
19 right, title or interest in the Property described herein adverse to Plaintiff’s title, or any cloud on
20 Plaintiff’s title thereto” are unknown to Plaintiff. Plaintiff is informed and believes that these
21 unknown defendants, and each of them, claim some right, title, estate, lien or interest in the
22 property hereafter described adverse to Plaintiff’s title; and their claims, and each of them,
23 constitute a cloud on Plaintiff’s title to that property.

25 11. Plaintiff is currently unaware of the true names and capacities of Defendants sued
26 herein as DOES 1 through 20, inclusive, and therefore sue these Defendants by these fictitious
27 names. Plaintiff will further amend his Complaint to allege these Defendants’ true names and
28

1 capacities when ascertained. Plaintiff is informed and believes, and thereon alleges, that each of
2 the fictitiously named Defendants is responsible in some manner and to some degree for the
3 occurrences herein alleged and that such Defendants proximately caused Plaintiff's damages as
4 herein alleged.
5

JURISDICTION AND VENUE

6
7 12. Plaintiff alleges that this court has jurisdiction over this matter because, as alleged
8 hereinbelow, Plaintiff asserts claims arising out of federal law and the amount in controversy
9 exceeds \$75,000. Venue is proper within this district because the Property is located within this
10 district, Plaintiff resides in this district, and the majority of the facts and circumstances alleged
11 herein occurred within this district.
12

PRELIMINARY STATEMENT AS TO DEFENDANTS PRINCESS PROPERTIES AND WALER ASTER

13
14 13. As home mortgage foreclosure increased from 2000 through the present, so have so-
15 called "foreclosure rescue scams." Typically, a homeowner facing foreclosure is identified in
16 newspapers or at government offices. The rescuer contacts the homeowner by phone, personal
17 visit, card or flyer, and offers to stop the foreclosure by promising a fresh start through a variety
18 of devices. As the date for the foreclosure approaches and the urgency of the matter becomes
19 greater, the rescuer or some entity with which he is linked agrees to arrange for the pay-off of the
20 mortgage indebtedness and to see to the transfer of title to the property to an investor pre-
21 arranged by the rescuer, often with a leaseback of the property or with the promise of transferring
22 the property back to the homeowner after a specific period of time. The goal is to steal the
23 property and/or equity from the homeowner's home. The result is loss of the homeowner's title,
24 loss of the homeowner's possession, and loss of the homeowner's equity. What typically happens
25 is:
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27

28 a. All proceeds are used to pay off the defaulted loan

- b. The homeowner walks away with nothing
- c. The “investor” pockets the equity and runs
- d. The straw borrower defaults on the loan
- e. The homeowner is evicted, loses the house and all equity.

7 14. Typically, a new lender extends a loan in the name of the “straw purchaser” for the
8 full value of the property. This new lender fails to perform due diligence in order to determine
9 the nature of the transaction, despite numerous red flags. Since the loan is usually sold on the
10 secondary market as a mortgage backed security and because courts have liberally applied the
11 “bona fide lender” and “bona fide purchaser” doctrines, there is little risk that even the complicit
12 lender will ever be held accountable.
13

14 15. Since a Foreclosure Rescue Scam is, by definition, fraudulent, it is very hard to
15 combat. But what is at stake is the American Dream of homeownership. The victims of these
16 scams are not the improvident or the irresponsible people who borrowed more than they could
17 pay and now find themselves “under water.” On the contrary, a Foreclosure Scam Artist only
18 seeks out victims who are well above water; people with lots of untapped equity in their homes.
19
20 These are often the most vulnerable among us.

PRELIMINARY STATEMENT AS TO FREMONT, SIERRA AND BONY

22 16. This matter involves parties who individually, jointly and severally participated in
23 statements, activities and events in which false representations were made to the Plaintiffs and to
24 courts of law in which some of the Defendants were asserted to be lenders, servicers and/or
25 owners of the Deed of Trust executed by Plaintiff on or about September 2000 naming Fremont
26 as Plaintiff's lender and MERS as "Mortgagee" or "Beneficiary and acting solely as nominee for
27 lender or lender's successors and assigns. This matter further involves two deeds of trust from

1 Aster, the asserted Owner of Real Opportunity, on the Property in favor of Sierra Pacific. The two
2 deeds of trust named Sierra Pacific as “lender” and naming MERS as “Mortgagee” or
3 “Beneficiary” and acting solely as nominee for lender or lender’s successors and assigns. The
4 two deeds of trust from Aster to Sierra Pacific were allegedly assigned to Defendant BONY by a
5 MERS. a. Specifically, BONY alternately named itself or the above referenced nonexistent
6 “trust” as the owner, servicer or “holder” of the debt, note and deed of trust in order to pursue a
7 foreclosure for its own interests, apart from the interests of the actual owner of the debt all in
8 derogation of the rights of the borrower, causing damages as more particularly described below.

9
10 b. At the same time Sierra participated in a scheme by Princess Properties and Aster to use
11 Aster’s name and credit to obtain two purchase money mortgages from Sierra Pacific Mortgage
12 Company, falsely representing that Aster intended to live in the Subject Property and to further
13 actively conceal the identity of the real owner of the subject debt and to engage in statements,
14 activities and events that misrepresented the status of all of the Defendants hereto.

15
16 (i) The result of this scheme was to obfuscate the misrepresentation and non-disclosures
17 committed by Defendants. Further result of this scheme was interference between the Plaintiff
18 and the owner of the debt such that neither the Plaintiff nor the owner knew of the existence or
19 identity of the other, thus preventing compliance with statutory and common law duties and
20 obligations regarding servicing, administration, modification or any settlement with the party
21 owning the debt, which contributed to damages suffered by Plaintiffs as more particularly
22 described below.

23
24 c. At no time was the foreclosure, or any of the events leading up to the foreclosure
25 (Notice of Default) intended to provide any benefit or pay for any loss incurred by the owner of
26 any actual debt. In fact, upon information and belief, such action was pursued in derogation of the
27 rights of the owner of the actual debt and the rights of the Plaintiff.

1 d. The foreclosure is void because none of the representations made regarding the legal
2 status of the loans or the participants supporting the claim for foreclosure were true. Most of the
3 misrepresentations were based upon fabricated documentation.
4

5 17. In short, MERS' conduct, as well as the Defendant's abuse of the MERS System, have
6 resulted in the filing of false, fraudulent and /or improper filings or publications and /or recording
7 of false instruments to support Foreclosure Proceedings, undermining the integrity of the judicial
8 process, creating confusion and uncertainty concerning property ownership interests, and
9 potentially created clouds of title on the subject property.

10 18. Fraudulent conduct which prevents a party from fairly and fully presenting his claims
11 or defenses is extrinsic fraud and not subject to res judicata.
12

13 19. A state court foreclosure obtained through fraud does not have a preclusive effect, and
14 this Court has the ability, if not the duty, to examine evidence of fraud brought to its attention.
15

16 20. Analysis of the facial validity of the use of various names and descriptions reveals the
17 absence of an actual party. Hence the documents upon which the above language relies does not
18 support facial validity.
19

20 21. The documents containing the language described above should not have been
21 recorded. The county recorder should have rejected such documents as being facially invalid,
22 requiring additional language and/or documents to be attached, if they existed.
23

24 22. Such language is a substantial deviation from custom and practice as well as common
25 sense and logic. Custom and practice of the same banks that are listed in the language described
26 above requires that they not accept such language without the additional documentation and
27 confirmation of facts that are declared on the face of the instrument. Common sense dictates that
28 the reason why such custom and practice exists is that most fraudulent schemes involve written
29

1 instruments in which various declarations are made that are untrue and lack support. For
2 purposes of recording, any declaration on the face of the instrument that requires the attachment
3 or description of documents that are not readily available in the public domain would be
4 unacceptable, much as, for example, a deed without a signature. The property must be described
5 with precision (or later corrected by affidavit), the grantor must be described with precision (or
6 later corrected) and the grantee must be described with precision (or later corrected). Without the
7 required corrections, the documents are facially invalid.

9
10 23. The absence of facially valid documents, even though they were improperly recorded,
11 negates the potential use of legal presumptions arising from the facial validity of
12 documents. Therefore, such documents should be rejected without proper foundation in
13 connection with the use of such documents for any purpose.

14
15 24. The proceedings in which the property was allegedly foreclosed, is improper and
16 based upon invalid terms. It is obvious that all such documents including the deed upon
17 foreclosure are defective in several material respects. The current title chain in the county records
18 regarding this property is at best clouded.

19
20 25. For a document to mean anything it must say enough that a reasonable person would
21 be able to confidently draw meaning from it. Analyzing the facial validity of documents used in
22 the within foreclosure reveals a pattern of misrepresenting the facial validity and thence to legal
23 conclusions that bind homeowners into proving matters beyond their control.

24
25 26. BONY is not and never has been a successor to JPMorgan Chase. There is nothing in
26 the public domain to support that assertion. There is no instrument attached and no description of
27 any transaction in which, as to this subject property and loan, we can ascertain how
28 BONY became the successor to JPMorgan Chase or even how Chase had any right, title or

1 interests concerning the subject loan. Hence the documents in which BONY appears are not
2 facially valid and are defective in terms of proof of title. The usual and acceptable manner of
3 phrasing such a succession, if it were true, would be “as successor to JPMorgan Chase pursuant to
4 that certain agreement of transfer by and between JPMorgan Chase (and/or other parties) and
5 BONY dated July 6, 200X.”
6

7 27. The use of the word “successor” suggests that BONY is in the role of Trustee. There is
8 no instrument attached and no description of any transaction in which, as to this subject property
9 and loan, the BONY became the successor Trustee to JPMorgan Chase. Hence the documents in
10 which BONY appears as Trustee are not facially valid and are defective in terms of proof of
11 title.
12

13 28. Other than by the use of parole evidence (outside the information contained on the
14 document itself) the reader cannot ascertain the existence or description of a specific trust
15 organized and existing under the laws of any jurisdiction. In addition, the issue of a transfer or
16 change of trustees of a trust, if one can be found, is not supported by language such as “pursuant
17 to the provisions of the trust agreement dated the 3rd day of May, 200Y in which the trust named
18 ‘Structured Asset Mortgage Investment II, Inc., Bear Stearns ALT-A Trust’ was created under the
19 laws of the State of New York”. Without such reference the facial validity of the instruments
20 remains invalid. Without the knowledge of the legal existence of the trust being confirmable by
21 public record, there is no support for the implied trust. Without support for the implied trust and
22 the trust agreement creating it, there is no obvious support for how trustees could exist or be
23 changed. Without support on the face of the instruments for how trustees of a trust could be
24 changed, the description of the change of trustees is merely a declaration that is not supported by
25 anything on the face of the document.
26
27

28

1 a. Notwithstanding all of the above, Defendants persisted in their various individual and
2 combined schemes and in making representations under cover of Plausible deniability ostensibly
3 created by the complexity of “transactions” that never actually occurred in the real world.
4

5 29. JPMorgan Chase is implied to have been the Trustee of the potentially nonexistent
6 trust. Once again, the implied assertion leaves the reader to determine if the trust was created
7 pursuant to the laws of any jurisdiction, and if JPMorgan was named as Trustee for the Trust.
8
9 In either event, both BONY and JPMorgan are described to be acting in a representative capacity
10 on behalf of “holders... of pass through certificates” and not as “trustees” of any “trust.” The
11 certificates are identified as Mortgage pass Through Certificates Series 2004-12. The reference to
12 being a “trustee” and the implied representations of the holders of certificates would be
13 acceptable if the “holders” were described as beneficiaries. The extrinsic evidence often shows
14 that such holders are not beneficiaries.
15

16 a. Any available description in the public domain is carefully worded to avoid any
17 direct assertion that investors are owners of the subject debt or any debt.

18 b. This leads to the question of how and why there is representation of the holders,
19 apart from the alleged trust. Is the representation implied from the trust agreement
20 that is not described? Is the representation the result of some other trust or agency
21 agreement? It is not possible to ascertain the answers to these vital questions without
22 resort to extrinsic evidence, thus making the instruments relying upon such language,
23 facially invalid.

24 c. Notwithstanding the above, the attorneys for Chase and then BONY have made
25 representations such that sitting judges came to the conclusion that the documents
26
27

were facially valid and presumed true which resulted in implied findings of fact exactly opposite to true events.

PRELIMINARY STATEMENT AS TO RESCISSION

5 30. TILA gives borrowers a federal right to rescind certain consumer-credit transactions,
6 and the statute unambiguously describes how to exercise the right: “by notifying the creditor, in
7 accordance with regulations.” 15 U.S.C. § 1635(a). The sending of the notice triggers a series of
8 steps through which the transaction is unwound. 15 U.S.C. § 1635(b) (mandating the creditor 20
9 days from “receipt of a notice” to take certain acts). A creditor in receipt of a rescission notice
10 must judicially seek a declaration that the notice was untimely, or that the section 1635(b)
11 procedures should be altered in light of the circumstances presented. 15 U.S.C. § 1635(b); 28
12 U.S.C. § 2201; *New Me. Nat'l Bank v. Gendron*, 780 F. Supp. 52, 56 (D. Me. 1991). An obligor
13 may sue for damages under section 1640(a) for a creditor’s failure to follow the unwinding
14 procedures expressed in § 1635(b); see also 12 C.F.R. § 226.23(d)(2)-(4).
15

17 31. Courts do not render “a judgment of rescission.” TILA rescission at law mechanics is
18 the result of an action already taken without the aid of a court. See *Sherzer v. Homestar Mortg.*
19 ~~Servs.~~, 707 F.3d 255, 265 (3rd Cir. 2013) (discussing differences between rescission at law “akin
20 to the way § 1635 operates,” and rejecting rescission in equity); Dan B. Dobbs, Law of Remedies
21 § 4.8, at 462 (2d ed. 1993) (“[T]he plaintiff effects the rescission, and the court gives a judgment
22 for restitution if that is needed.”).

24 32. In the case at bar, the Plaintiff's claim does not ask the District Court for
25 rescission. It is grounded in the creditor's failure to "effect" rescission procedures. As the
26 Consumer Financial Protection Bureau (CFPB) explained to multiple circuit courts, rescission at
27 law under TILA is the result of an action already taken without the aid of a court. The remedy of

1 “rescission” is an avoidance of a transaction, the extinguishment of an agreement such that in
2 contemplation of law, it never existed. 17A Am.Jur.2d Contracts § 600 (1991). It is a remedial
3 right to which an aggrieved party is entitled with or without resort to a tribunal. The advantage of
4 rescission at law as an alternative to enforcement of a contract, outweigh its costs in terms of
5 contractual instability and potential forfeiture. TILA contemplates rescission as a private non-
6 judicial “self-enforcing mechanism” that imposes “all burdens on the creditor” once notice is
7 given. *Williams v. Homestake Mortg. Co.*, 968 F.2d 1137, 1139-1141 (11th Cir. 1992); see
8 *Peterson v. Highland*

9
10 *Music, Inc.*, 140 F.3d 1313, 1322 (9th Cir. 1998) (after a party “has effected the rescission” by
11 notice, “subsequent judicial proceedings are for the purpose of confirming and enforcing that
12 rescission”)

13
14 33. Plaintiff exercised his rescission by timely sending notice. 15 U.S.C. § 1635(a). The
15 sale or transfer of a home after exercising rescission rights does not defeat any consumer’s
16 rescission right if the rescission unwinding procedure was not completed because the creditor
17 failed to comply with its TILA section 1635(b) obligations.

18
19 34. Plaintiff’s rescission renders any subsequent assignment of the note and deed of trust
20 void. Because rescission was completed prior to the alleged transfer of title to BONY, BONY did
21 not obtain title to Plaintiff’s property and therefore did not have any right, title and interest upon
22 which to conduct a foreclosure sale. Without title, BONY cannot maintain a detainer action
23 against Plaintiff.

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28 **FACTUAL ALLEGATIONS**

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30 35. The material facts in this case are not in dispute. Randhawa executed a deed of trust
31 (mortgage) on the Property, in favor of Mortgage Electronic Registration System, as nominee for
32 Fremont. The deed of trust secured a \$405,848 note from Randhawa to Fremont. The third party

1 for whom Fremont was acting was never disclosed and is unclear at this time. On or about April
2 2004 Fremont initiated a foreclosure procedure.

3 36. On or about July 23, 2004, Plaintiff was approached and solicited at his home in the
4 evening by Elauria who represented that he was an agent and manager of the Princes Properties.
5

6 37. Elauria represented to Plaintiff that he and his company had the ability to "save"
7 Plaintiff from "losing his home" at the foreclosure sale and solicited Plaintiff to enter into what he
8 described to be an arrangement whereby Plaintiff would stay in the house and get back on his feet
9 financially, by transferring the Property to his company for 60 days after which time his company
10 would transfer the property back to Plaintiff. Elauria specifically represented to Plaintiff that
11 Princess Properties knew how to "arrange financing so you can keep your house" and assured
12 Plaintiff that while Plaintiff would have to transfer title to Princess Properties, Plaintiff would still
13 have possession of the house and Princess Properties will transfer title back to him within 60
14 days.
15

16 38. At all times when Elauria was representing to Plaintiff that Plaintiff would get title to
17 theProperty back in 60 days, Elauria led Plaintiff to believe that it would be Princess Properties
18 itself and its investment partners who would be providing funding to refinance the mortgage loan
19 on the Property that was in foreclosure.
20

21 39. On or about August 3, 2004, in reliance upon the representations and promises of
22 Elauria and Princess Properties that Plaintiff would get title back to the subject property within 60
23 days, Plaintiff signed a Grant Deed transferring title of the Property to Princess Properties, which
24 Grant Deed was recorded by Princess Properties on August 4, 2004, A true and correct copy of
25 the Grant deed Plaintiff signed under the fraudulent inducement of Princess Properties is attached
26 as **Exhibit "B"**.
27

28 40. On or about September 10, 2004 Princess Properties invited the Plaintiff to its office to

1 sign certain loan documents. Plaintiff and his spouse signed a "Promissory Note (Installment
2 Land Contract)" for \$750,000 in which the Princess Properties was the lender and Iqbal and
3 Gurdev Randhawa were the borrowers. A true and correct copy is attached as **Exhibit "C"**. At
4 the same time, Underwood on behalf of the Princess Properties executed and provided Plaintiff
5 with a copy of the notarized Grant Deed from Princess Properties to Iqbal and Gurdev Randhawa,
6 purporting to transfer title in the Property from Princess Properties back to Plaintiff, a true and
7 correct copy of which is attached as **Exhibit "D"**.

9 41. Plaintiff, in reasonable reliance thereon, was led to believe that the grant deed dated
10 September 10, 2004, was performing the promise previously made by Elauria and Princess
11 Properties that title to the Property would be transferred back to Plaintiff within 60 days. Plaintiff
12 was fraudulently induced to enter the transaction with Princess Properties. Instead of being
13 "rescued" the Plaintiff not only lost his Property but also equity in his home.

15 42. Prior to Plaintiff signing the loan documents on September 10, 2004 to Princess
16 Properties, Aster, the Owner of Real Opportunity, executed two deeds of trust on the Property in
17 favor of Sierra Pacific attached hereto as **Exhibits "E" and "F"**. The two deeds of trust named
18 Sierra Pacific "lender" and naming MERS as "Mortgagee" or "Beneficiary" and acting solely as
19 nominee for lender or lender's successors and assigns.

20 43. At no time before Plaintiff signed the loan documents on September 10, 2004, did
21 Real Opportunity and/or its predecessor Princess Properties disclose to Plaintiff that they had
22 already caused Aster to execute two deeds of trust on the Property.

24 44. On or about October 5, 2004, Princess Properties caused to be recorded a Grant Deed
25 transferring title in the Property from Aster to Princess Properties. See "Grant Deed Recorded
26 October 5, 2004 from Aster to Princess Property" attached hereto as **Exhibit "G"**. At no time did
27
28

1 Defendant Real Opportunity and its predecessor Princess Properties disclose to Plaintiff such
2 transfer of title back to Princes Properties. The purpose of such transfer of title from Aster to
3 Princess Properties was to further the conspiracy between Real Opportunity and its predecessor
4 Princess Properties to obfuscate the misrepresentation and non-disclosures committed by Real
5 Opportunity and its predecessor Princess Properties when they delivered on September 10, 2004,
6 the Grant Deed purporting to transfer title from Princess Properties back to Plaintiff at a time
7 when Princess Properties in truth held no title to the Subject Property.

8
9 45. Aster, who was the owner of the Real Opportunity has acknowledged that he was paid
10 \$5,000 by Princess Properties for allowing Princess Properties to use his name and credit to
11 obtain two purchase money mortgages from Sierra Pacific Mortgage Company, falsely
12 representing that Aster intended to live in the Subject Property.

13
14 46. BONY and its predecessor Sierra Pacific Mortgage Company, aided and abetted the
15 fraud and deceit of Real Opportunity and its predecessor Princess Properties by knowingly
16 accepting the fraudulent loan application provided by said entities, without such lender
17 performing the required diligent investigation and underwriting as required by the applicable
18 lending laws, regulation and despite the evidence inherent in the documentation provided to said
19 lender because such lender was motivated by its strategy to accept as many subprime mortgage
20 loans as it could in order to sell asset-backed securities, where the pooling and sale of the
21 fraudulent loans as pooled securitization would allow such lender and its principals to escape the
22 financial consequences of accepting fraudulent applications and making fraudulent loans
23 brokered by said Defendants.

24
25 47. On or about January 31, 2005 Real Opportunity and its owner Aster recorded a Grant
26
27
28

1 Deed transferring title to the Property from Princess Properties to Real Opportunity Investments,
2 LLC. Such transfer of title to the Property was made without Plaintiff's written consent as
3 required by Civil Code section 1695.6(e), the Home Equity Sales Act.
4

5 48. In early 2005, demands were made upon Plaintiff by Real Opportunity and Aster to
6 start making payments to Real Opportunity Investments, LLC, attention Walter J Aster. (See
7 "Notice of Assignment of Interest & Obligations" attached hereto **Exhibit "H"**.)
8

9 49. Being alarmed with all these developments, Plaintiff called Princess Properties to
10 inquire about their status as to payments being diverted to the Real Opportunity Investments.
11 Plaintiff received a phone call back from the Principal of Princess Properties, Nick Martin, who
12 represented in response to Plaintiff's question that "there is nothing wrong" and that someone
13 would get back to Plaintiff.
14

15 50. Approximately a week later Plaintiff received a phone call from Aster. Aster advised
16 Plaintiff that he had taken over Princess Properties contract with Plaintiff, that he had all the
17 responsibilities and obligations that Princess Properties had, that "I am Princess Properties Now,"
18 and everything (related to Princess Properties) is the same as it was with Princess Properties. (See
19 **Exhibit "H"**.)
20

21 51. During all the transactions with Princes Properties and its successor Real
22 Opportunities Investments, LLC, no Truth-In- Lending Act disclosures or other documents were
23 provided to the Plaintiff as required under the Truth-In-Lending Act ("TILA"). In addition,
24 Princess Properties and its officers provided a signed and notarized Grant Deed purporting to
25 transfer title back to Plaintiff to deceive Plaintiff into thinking the Property had been conveyed to
26 him.
27

28 52. Because of the acts and omissions of all persons affiliated with Defendants as alleged
herein, on or about August 31, 2005, Plaintiff sent a Notice of Rescission pursuant to Civil Code
19

1 §1695.14 and his rights under the TILA and its interpreting case law to Real Opportunity
2 Investments, successor to the Princess Properties & Associates Acquisitions & Holdings, LLC.
3 Said Notice of Rescission was duly delivered pursuant to 15 USC 1635(a) and Regulation Z, 12
4 C.F.R. § 226.23. It rescinded the Promissory Note (**Exhibit C**) and Plaintiff therein offered to
5 tender the full amount of the rescinded mortgage loan debt conditional only on concurrent return
6 of all consideration received by Princess Properties and its successors Real Opportunity
7 Investments and its owner Aster.

8
9 53. The Notice of Rescission was recorded at the Solano County Recorder's Office,
10 pursuant to State of California Civil Code 1695.14 (a), (b), (c), on September 1, 2005. A true and
11 valid copy of the document, titled NOTICE OF RESCISSION UNDER CALIFORNIA CIVIL
12 CODE SECTION 1695.14 is attached to this First Amended Complaint as **Exhibit "I"** and is
13 incorporated herein by this reference as though set forth in full.
14

15 54. No action was filed by Real Opportunity Investments and/or its predecessor Princess
16 Property opposing Plaintiff's Qualified Notice of Rescission during the following 20 days, nor
17 did Real Opportunity Investments and/or its predecessor Princess Properties comply with their
18 deadline and obligations to terminate the creditor's security interest in the Property title and
19 promissory note.
20

21 55. BONY was well aware of the Notice of Rescission as they have made unsuccessful
22 efforts to expunge the Qualified Notice of Rescission in a prior case. (Minute Order after hearing
23 July 12, 2012, Case number FCS027134, *Real Opportunity Investments, LLC v. Randhawa*,
24 hereafter "*ROI v. Randhawa*") attached as **Exhibit "J"**.
25

26 56. In *ROI v. Randhawa*, BONY filed a cross complaint seeking (1) declaratory relief; (2)
27 equitable subrogation; (3) judicial foreclosure; and (4) quiet title. BONY filed a Motion for
28 Summary Judgment. In the Order After Hearing dated December 14, 2012, The Court found that

1 “...no evidence is currently before the court to establish the standing of either Moving Party, as
2 assignee or successor in interest of either of the subject loans or deeds of trust.” The court found
3 BONY was unable to show its interest in the loan or deed of trust. The Order further stated:
4
5 “This motion seeks summary judgment of Randhawa’s two causes of action, but not the
6 causes of action asserted by Moving Parties cross-complaint against Randhawas. The
7 court grants summary judgment to Moving Parties as to both remaining causes of action
8 by Randhawas. The remainder of the case, if not dismissed by Moving Parties, will
9 proceed to trial as scheduled, with the burden on Moving Parties to prove their standing
10 to assert rights to the subject property as successors in interest to a bona fide
11 encumbrancer.”

12 57. In light of this ruling, the Defendant BONY dismissed their cross complaint (See
13 **Exhibit “K”** (Case number FCS027134, *ROI V. Randhawa* “Order after Hearing”) & **Exhibit**
14 **“L”**.)

15 58. Despite lacking standing in the Property, on or about April 17, 2015, Defendant
16 BONY recorded a Trustee’s Deed Upon Sale, indicating that it was the new “equity purchaser”
17 who had acquired ownership and title to the Property, by purchasing its own sale at auction for
18 the sum of \$523,316. A true and correct copy of the document incorporated here by reference,
19 titled Trustee’s Deed upon Sale, has been attached as this First Amended Complaint as **Exhibit**
20 **“M”** and by this reference is made a part of the First Amended Complaint.

21 59. On or about May 18, 2015, the BONY served Plaintiff with an Unlawful Detainer to
22 evict him from his residence of 15 years.

23 60. Real Opportunity Investments has since had its status revoked by the Nevada
24 Secretary of State. Aster has filed for bankruptcy protection.

25 61. The obvious conclusion is that the Defendants Princess Properties, Elauria,
26 Underwood and Aster all conspired to steal Plaintiff’s property through a foreclosure rescue
27 scam. Further conclusion is that Aster, Sierra and BONY all conspired to fabricate and use
28 documents and instruments, and to record some of them, to lend the appearance that they had the

1 right to foreclose upon the Property. This left the actual owner of the debt unsecured by either a
2 note or mortgage.

3 a. Further some of those documents purported to be instruments of transfer relating to
4 “transactions” that had no existence in real life and were obtained through fraud.

5 b. All of such instruments are now void by operation of law.

6 62. As a direct and proximate result of the above illegal actions the Plaintiff has lost his
7 home and has been obliged to seek and pay for the services of legal counsel and to become
8 indebted for substantial fees and expenses in excess of \$25,000 plus court costs and further fees
9 as this saga continues for which the Defendants should be liable, jointly and severally.

10 63. The Plaintiff suffers further damage from the cloud on his legal title to the subject
11 property, preventing the sale, refinancing and quiet enjoyment of the land for which the
12 Defendants should be liable jointly and severally.

13 64. The Plaintiff suffers further damages by continuing doubt and insecurity over their
14 right to own and remain on the property causing grievous emotional distress for which the
15 Defendants should be liable jointly and severally.

16 65. At all times material hereto each of the Defendant owed a duty of fair dealing and
17 reasonable and accurate disclosure, in accordance with applicable common law, Federal and State
18 law, rules and procedures including but not limited to the Truth in Lending Act and the Federal
19 Debt Collection Procedures Act.

20 66. Instead each Defendant was a party to a scheme in which (1) Princess Properties,
21 Elauria, Underwood and Aster conspired with each other to defraud Plaintiff and obtain title to
22 his home; Sierra and BONY was a party to a scheme in which the identity of the owner of the
23 debt was actively concealed and continues to be concealed, and (2) parties were engaged to
24 execute and record false and misleading documents of alleged transfer that never actually
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26
27
28

1 occurred, upon which the Plaintiff reasonably relied and which was caused by the breaches of
2 duty by each of the defendants, individually, jointly and severally.

3 **COUNT I -QUIET TITLE**
4

5 67. The Plaintiff incorporates by this specific reference paragraphs 1-66 of this complaint
6 and paragraphs as if fully restated herein.

7 68. California law requires the following for a quiet title action:

8 a description of the property that is the subject of the action.
9 the title of the plaintiff as to which a determination of quiet title is sought.
10 the adverse claims to plaintiff's title.
11 the date as of which the determination is sought.
12 a prayer for the determination of plaintiff's title against the adverse claims.

13 69. The Plaintiff is in possession of the property.

14 70. The Deeds of Trust to Fremont, Sierra Pacific and BONY; the assignment from Sierra
15 Pacific to BONY; and the Trustee's Deed to BONY are still recorded against the Plaintiff's
16 Property. Each of the documents referenced in this paragraph is a sham. None of the documents
reflect any actual monetary transactions that of necessity is the core of any loan contract.

17 71. The Grant Deed from Plaintiff to Princess Properties was obtained through fraudulent
18 means.

19 72. The Grant Deed from Princess Properties to Aster was executed to continue the fraud
20 against Plaintiff and to obtain title to Plaintiff's Property through fraudulent means.

21 73. The two deeds of trust from Aster to Sierra were a continuation of the fraud against
22 Plaintiff.

23 74. The Trustee's Deed to BONY naming BONY successor to JPMorgan Chase was a
24 further continuation of the fraud against Plaintiff to obtain title to Plaintiff's Property and is
25 without any current legal effect or existence.

1 75. Plaintiff sent a Notice of Rescission and BONY was well aware of the Notice of
2 Rescission as they have made unsuccessful efforts to expunge the Qualified Notice of
3 Rescission.

4 76. Therefore, each of the documents referenced in this Count is without any current legal
5 effect or existence.

6 77. Notwithstanding the above, the Defendants assert an interest in the property
7 preventing removal of the encumbrance and related documents and further preventing sale or
8 refinancing of the property.

9 78. Accordingly, while the Plaintiff owns the Property, by operation of law, the Plaintiff
10 remain in doubt as to his rights, specifically the scope of his ownership in fee simple absolute of
11 the subject property.

12 **WHEREFORE**, the Plaintiff requests this Honorable Court enter an order declaring the rights of
13 the parties, enjoining the defendants from asserting any interest in the subject property or loan,
14 and order Defendants, and their successors and assigns, to file instruments that release all claims
15 to the subject property from Defendants and their successor and assigns, including their right to
16 administer or service a loan that no longer exists and order all Defendants, and their successors
17 and assigns, to disclaim and vacate all claims and for an issuance of a writ of possession or
18 restitution to the sheriff or other proper officer of Solano County, State of California.
19
20

21 **COUNT II - FRAUD AS TO ALL DEFENDANTS**

22 79. The Plaintiff incorporates by this specific reference paragraphs 1-66 of this complaint
23 as if fully restated herein.

24 80. The elements for fraud in California are:

25 1. That Defendant represented to Plaintiff that a fact was true;
26
27 2. That Defendant's representation was false;

1 3. That Defendant knew that the representation was false when it was made, or that it was
2 made recklessly and without regard for its truth;
3 4. That Defendant intended that Plaintiff] rely on the representation;
4 5. That Plaintiff reasonably relied on Defendant's representation;
5 6. That Plaintiff was harmed; and
6 7. That Plaintiff's reliance on Defendant's representation was a substantial factor in
7 causing harm to the Plaintiff

8 81. Fremont intentionally and deliberately and with forethought defrauded the Plaintiff
9 and the public records with the proffer and filing of fraudulently constructed disclosure and loan
10 documents that later became part of a group of false foreclosure documents.

11 82. Princess Properties then swooped in with its fraudulent foreclosure rescue scheme
12 whereby Elauria, as a representative of Princess Properties, knowingly made false statements to
13 Plaintiff in order to coerce Plaintiff into executing a grant deed to Princess Properties with the
14 false promise of Princess Properties, within 60 days, executing a Grant Deed back to Plaintiff.

15 83. Princess Properties, unbeknown to Plaintiff, signed a Grant Deed from Princess
16 Properties to Aster.

17 84. Aster obtain two purchase money mortgages from Sierra Pacific after which time
18 Princess Properties invited the Plaintiff to its office to sign certain loan documents. Plaintiff and
19 his spouse signed a 'Promissory Note (Installment Land Contract)' for \$750,000 in which
20 Princess Properties was the lender and Iqbal and Gurdev Randhawa were the borrowers.

21 85. At no time prior to Plaintiff signing the Grant Deed to Princess Properties did Real
22 Opportunity or its predecessor Princess Properties disclose to Plaintiff that Aster had already
23 signed two purchase money mortgages to Sierra Pacific.

1 86. Aster acknowledged that he was paid \$5,000 by Princess Properties for allowing
2 Princess Properties to use his name and credit to obtain two purchase money mortgages from
3 Sierra Pacific, falsely representing that Aster intended to live in the Property.

4 87. BONY and its predecessor Sierra Pacific, aided and abetted the fraud and deceit of
5 Real Opportunity and its predecessor Princess Properties by knowingly accepting the fraudulent
6 loan application documents provided by said entities, without performing the customary required
7 diligent investigation and underwriting as required by applicable lending laws, regulations and
8 despite evidence inherent in the documentation provided to them because they were motivated by
9 its strategy and business model to accept as many subprime mortgage loans as possible in order to
10 sell asset-backed securities where the pooling and sale of the fraudulent loans as pooled
11 securitization would allow such lender and its principals to escape the financial consequences of
12 accepting fraudulent applications and making fraudulent loans.

13 88. The Defendants jointly and severally, intentionally and deliberately and with
14 forethought defrauded and continue to defraud the Plaintiff, the Superior Court for the County of
15 Solano, CA and the public record with the proffer and filing of the fraudulently obtained Grant
16 Deeds, constructed mortgage assignment, foreclosure litigation related documents, summary
17 judgment motion, opposition affirmation and briefs prepared and filed with the Superior Court for
18 the County of Solano, CA along with documents in support of their detainer action against
19 Plaintiff.

20 89. Further, the Defendants caused various correspondence and notices to be issued,
21 published and/or recorded directed to the Plaintiff as though the authority to issue such
22 documents was present and the content of the documents was authentic and true. Each of those
23 notices and correspondence contained false and misleading statements as to the status and owner
24 of the debt.

1 90. All such representations were false and intended to deceive the Plaintiff to his
2 detriment. All such false representations were designed to mislead any court that reviewed the
3 process of the subject foreclosure.

4 91. A primary step in Defendants' plan to illegally obtain possession of Plaintiff's
5 property, starts with the fraudulent actions and statements of Princess Properties, its agents,
6 servants, and/or employees; the fraudulent application of Aster to Sierra Pacific; Sierra Pacific
7 knowingly accepting the fraudulent loan application documents provided by said entities, without
8 performing the required diligent investigation and underwriting as required by applicable lending
9 laws, regulations and despite evidence inherent in the documentation provided to them; Sierra's
10 and BONY's creation, recording, and making use of the false assignment in the public record to
11 superficially establish mortgage and note ownership in order to foreclose and file a detainer
12 action against Plaintiff by false claims of standing and capacity to sue.

13 92. Defendants, in continuing conspiracy together, had full "knowledge" their "material
14 representation" of mortgage and note ownership was "false" and was "made with knowledge of
15 its falsity and the intention to deceive" and that the Plaintiff and the Court would "justifiably rely
16 upon" Defendants' false claim wherein the true object was the illegal divestment of the Plaintiff's
17 property.

18 93. None of the Defendants had any connection with the Property at all except for their
19 fraudulent scheme and phony documents created, recorded and used in litigation by said
20 Defendants to support their illegitimate claims against the Plaintiff including the cross-complaint
21 filed by BONY in the Superior Court of California, County of Solano, CA seeking (1) declaratory
22 relief; (2) equitable subrogation; (3) judicial foreclosure; and (4) quiet title, which cross-complaint
23 was dismissed by BONY.

1 94. The Plaintiff reasonably relied upon each and every material misrepresentations as
2 described above to his detriment.

3 95. The Plaintiff, deprived of vital information that, if known, would have resulted in
4 different courses of action, was induced and ultimately compelled by Defendants'
5 misrepresentations to sign documents of transfer and to litigate a cross-complaint action that was
6 illegitimately commenced, and was maintained and supported against the Plaintiff by said
7 Defendants, who also used fraudulently constructed and forged documents to falsely assert that a
8 true, real and viable party was prosecuting the action against the Plaintiff.

9 96. As a direct and proximate result of the false representations by Defendants, the
10 Plaintiff has suffered economic and emotional damages.

11 **WHEREFORE**, based upon the foregoing, the Plaintiff is entitled to judgment that all of the
12 Defendants have defrauded the Plaintiff. As a direct result of Defendants' fraud, the Plaintiff has
13 been damaged and seeks damages in the amount of \$1,000,000.00, an award of attorney's fees, to
14 the extent allowable by law and costs, and for all other relief this Honorable Court finds
15 appropriate.

16 **COUNT III –CONSPIRACY TO COMMIT FRAUD AS TO ALL DEFENDANTS**

17 97. The Plaintiff incorporates by this specific reference all preceding introductory
18 paragraphs of this complaint and paragraphs 1-66 as if fully restated herein.

19 98. An agreement was made by and between all Defendants to deceive both the Plaintiff
20 and the California Superior Court of California, County of Solano, and to defraud the public
21 record thereby breaking Federal and California law.

22 99. As demonstrated by Defendants' creation and use of fraudulently obtained Grant
23 Deeds, fraudulent purchase money mortgages and fraudulently constructed and forged mortgage
24

1 assignment and other foreclosure related documents, Defendants have colluded with each other to
2 achieve their illegal goals by equally illegal means.

3 100. Defendants Sierra Pacific and BONY maintained their illegitimate Superior Court of
4 Solano County cross-claim action against the Plaintiff and subsequent foreclosure action using
5 phony documents. Defendant BONY maintained its eviction action against the Plaintiff using
6 phony documents. MERS facilitated the actions of Defendants by helping to create phony
7 transfers of the mortgages. Defendants clearly intended to break the law in a manner that required
8 Defendants to act as a single cohesive unit where they either created or presented fraudulently
9 obtained documents along with phony documents and paperwork necessary to pursue foreclosure
10 and eviction.

11 101. Defendants have demonstrated a corrupt pattern of overtly criminal conduct and have
12 maintained its foreclosure and eviction actions against the Plaintiff and tens of thousands in
13 California and throughout the United States under the outrageously fraudulent and deliberately
14 misleading and contrived circumstances as set forth in detail in this First Amended Complaint.

15 102. The Plaintiff reasonably relied upon each and every material misrepresentations as
16 described above to his detriment.

17 103. Plaintiff, deprived of vital information that, if known, would have resulted in
18 different courses of action starting with the execution of the original note and deed of trust to
19 Fremont, was induced and ultimately compelled by Defendants' misrepresentations to litigate an
20 action that was illegitimately commenced, and is maintained and supported against the Plaintiff
21 by said Defendants, who also used fraudulently constructed and forged documents to falsely
22 assert that a true, real and viable plaintiff party was prosecuting the cross-complaint and eviction
23 action against the Plaintiff.

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1 104. As a direct and proximate result of the false representations by Defendants, the
2 Plaintiff suffered economic and emotional damages.

3 WHEREFORE, based upon the foregoing, the Plaintiff is entitled to judgment that all Defendants
4 have conspired to commit fraud upon the Plaintiff. As a direct result of Defendants' conspiracy to
5 commit fraud, the Plaintiff has been damaged and seek damages in the amount of \$1,000,000.00,
6 an award of attorney's fees and costs, and for all other relief this Honorable Court finds
7 appropriate.

8 **COUNT IV– FRAUDULENT MISREPRESENTATION AS TO ALL DEFENDANTS**

9 105. The Plaintiff incorporates by this specific reference all preceding paragraphs of this
10 complaint and paragraphs 1-66 as if fully restated herein.

11 106. At all times material hereto, each of the Defendants had a duty of fair dealing and
12 honesty, together with a duty to comply with Federal and State lending laws, rules and regulations
13 and Federal and state collection statutes.

14 16. a. Each of the defendants knew, must have known or should have known that the
15 documents and representations proffered in support of their foreclosure rescue scheme,
16 foreclosure and eviction attempts were false.

17 19. b. Each of them proceeded to use said false documents and information for their own
18 purposes and for their own benefit.

20 22. 107. Defendants have misrepresented their ownership of the Plaintiff's Property and their
21 ownership, administrative rights, and authority to service, collect or enforce the subject debt by
22 falsely representing interests in the Plaintiff's Property, mortgage and note executed in favor of
23 Fremont as well as said Defendants' interest in the mortgage and note executed in favor of Sierra
24 Pacific, their standing and capacity to sue and the true status of the Plaintiff's ownership in the
25 Property and deed of trust and note.

1 108. The Plaintiff, deprived of vital information that, if known, would have resulted in
2 different courses of action starting with the execution of the original note and deed of trust, was
3 induced and ultimately compelled by Defendants' misrepresentations to sign a Grant Deed
4 allegedly transferring the Property to Princess Properties, litigate actions that was illegitimately
5 commenced, and is maintained and supported against the Plaintiff by said Defendants, who also
6 used fraudulently constructed and forged documents to falsely assert ownership of Plaintiff's
7 Property and that a true, real and viable plaintiff party was prosecuting the action against the
8 Plaintiff.

10 109. Defendants are jointly and severally liable for their own and each other's acts of
11 fraud by their misrepresentation as well as all damages arising from the same including punitive
12 damages and attorney's fees.

14 110. The Plaintiff reasonably relied upon each and every material misrepresentations as
15 described above to his detriment.

16 111. The Plaintiff, deprived of vital information that, if known, would have resulted in
17 different courses of action starting with the execution of the original note and deed of trust to
18 Fremont, was induced and ultimately compelled by Defendants' misrepresentations to litigate an
19 action that was illegitimately commenced, and is maintained and supported against the Plaintiff
20 by said Defendants, who also used fraudulently constructed and forged documents to falsely
21 assert that a true, real and viable plaintiff party was prosecuting the cross-complaint and eviction
22 action against the Plaintiff.

24 112. As a direct and proximate result of the false representations by Defendants, the
25 Plaintiff suffered economic and emotional damages.

26 **WHEREFORE**, based upon the foregoing, the Plaintiff is entitled to judgment that Defendants
27 have defrauded the Plaintiff by misrepresentation. As a direct result of Defendants' fraud by
28

1 misrepresentation, the Plaintiff has been damaged and seeks damages in the amount of
2 \$1,000,000.00, an award of attorney's fees and costs, and for all other relief this Honorable Court
3 finds appropriate.

4 **COUNT V - NEGLIGENT MISREPRESENTATION**

5 113. The Plaintiff incorporates by this specific reference all preceding paragraphs of this
6 complaint and paragraphs 1-66 as if fully restated herein.

7 114. At all times material hereto the Defendants had a duty to the public, of which the
8 Plaintiff is of the class, to properly conduct business in compliance with its duties of fair dealing
9 and true representations supported by careful due diligence before depriving anyone of their
10 property or homestead by fraudulent obtained Grant Deeds and forced forfeiture in foreclosure
11 and a detainer action.

12 115. Specifically, they had a duty to control the use of their name such that their names
13 were not used to advance a fraudulent or illegal enterprise.

14 116. The granting of a purchase money mortgage to Aster by Sierra Pacific and then
15 claiming they were the owners and holders of Aster's Note were a false statements intended to
16 induce reliance upon it by the Plaintiff and the trial judge.

17 117. Fremont, Sierra and BONY were negligent in allowing their names to be presented as
18 owners or holders of a mortgage and for making the proffering of false evidence statements
19 concerning the ownership of the Note and Deed of trust because they knew or should have known
20 that the Plaintiff's and the Aster loans were never properly assigned to them.

21 118. Fremont, Sierra Pacific and BONY caused or allowed their names to be utilized by
22 others in an attempt to legitimize an otherwise illegitimate foreclosure action as can be further
23 demonstrated by the assignments recorded in the public records of Solano County, California.
24 The people whose names were affixed to the alleged assignments have never been shown to be
25

1 legally authorized to sign any document on behalf of MERS, Sierra or BONY Their marks were
2 placed on these document which purport to be assignments of deed of trust and note, without
3 knowledge nor a corporate seal.

4 119. Defendants knew, or should have known that and subsequently abandoned the fake
5 and fraudulently obtained documents that were false and misleading designed only to induce the
6 trier of fact and the Plaintiff to rely on the statements that Sierra and then BONY were the owner
7 of Plaintiff's Property and the holder of the debt, note or deed of trust from Aster and for the sole
8 purpose of establishing the element of legal "standing" at the cost of the truth.

9 120. BONY knew, or should have known, that the mark placed on the assignment which
10 purported to assign the Aster's deed of trust and note to BONY was executed without knowledge
11 or corporate seal and was creed for the sole purpose of establishing the element of legal
12 "standing" in order for BONY to pursue an eviction action against the Plaintiff.

13 121. As a direct result of Fremont being falsely described as the named owner of the debt
14 in the original foreclosure action against Plaintiff, and making the representations that it made,
15 the Plaintiff suffered damages.

16 122. As a direct result of BONY being falsely described as the named owner of Plaintiff's
17 Property and eviction action against Plaintiff, and making the representations that it made, the
18 Plaintiff suffered damages.

19 123. The Plaintiff's proximate damages consist of attorney's fees and costs; a cloud of
20 title to the Plaintiff's, damage to credit reputation due to the filing of a foreclosure; emotional and
21 physical damages to themselves caused by loss of one's home and threatened eviction and
22 emotional turmoil.

23 124. The Plaintiff, deprived of vital information that, if known, would have resulted in
24 different courses of action starting with the execution of the original note and deed of trust to
25

1 Fremont, was induced and ultimately compelled by Defendants' misrepresentations to litigate
2 actions that were illegitimately commenced, and were maintained and supported against the
3 Plaintiff.

4 **WHEREFORE**, based upon the foregoing, the Plaintiff is entitled to judgment that Defendants
5 have defrauded the Plaintiff by misrepresentation. As a direct result of Defendants' fraud by
6 misrepresentation, the Plaintiff has been damaged and seeks damages in the amount of
7 \$1,000,000.00, an award of attorney's fees and costs, and for all other relief this Honorable Court
8 finds appropriate.

9
10 **COUNT VI - NEGLIGENT SUPERVISION**

11
12 125. The Plaintiff incorporates by this specific reference all preceding paragraphs of this
13 complaint and paragraphs 1-66 as if fully restated herein.

14
15 126. At all times material hereto the Defendants had a duty to the public, of which
16 Plaintiff is of the class, to properly conduct business in compliance with its duties of fair dealing
17 and true representations supported by careful due diligence before depriving anyone of their
property or homestead by forced forfeiture in foreclosure.

18
19 127. Specifically, BONY and its predecessor Sierra Pacific Mortgage Company had a
20 duty to required diligent investigation and underwriting as required by the applicable lending
laws, regulation.

21
22 128. Sierra and BONY knew, or should have known these facts, yet allowed the
23 fraudulent application document to be executed and used for Aster to obtain two purchase money
24 mortgages and then subsequently foreclose and seek eviction of the Plaintiff.

25
26 129. Sierra Pacific and MERS, caused to be prepared a fraudulent purported Assignment
of Deed of trust and note from Sierra Pacific to BONY.

1 130. The fraudulent assignment was prepared and executed in order to create the false
2 illusion that all subsequent assignees owned or owns the deed of trust and note. The basis for this
3 allegation of the creation of a fraudulent assignment are the following facts:
4

5 a. No corporate resolution has ever been made naming or appointing any of the signers of
6 the purported Assignments showing authority to act in a representative capacity.
7

8 b. Defendants knew, or should have known these facts, yet allowed the fraudulent
9 document purporting to be assignments to be drafted and executed in order to seek to foreclose
10 and eviction on the property owned by the Plaintiff.
11

12 c. The alleged assignment was designed to create the illusion of standing to allow BONY
13 to claim nominal ownership of the loan even though the note and the deed of trust were never
14 sold to them and to allow BONY to claim title in order to maintain an eviction action against the
15 Plaintiff.
16

17 d. The marks were placed on the documents which purported to assign the note and
18 mortgage, with Defendants aware of the fact that the documents were not duly executed pursuant
19 to California law.
20

21 131. Defendants had actual and/or constructive knowledge of the negligence of its
22 employees and/or agents Defendants failed to intercede to Plaintiff's interest from such harm.
23

24 132. Defendants had actual and/or constructive knowledge of the negligence of its
25 employees and/or agents and Defendants failed to intercede to protect Plaintiff's interest from
26 such harm.
27

28 133. The actions of Defendants and their employees and/or agents constitute negligence
and/or gross negligence.
29

30 134. The Plaintiff reasonably relied upon each and every material misrepresentations as
31 described above to his detriment.
32

1 135. The Plaintiff, deprived of vital information that, if known, would have resulted in
2 different courses of action starting with the execution of the original note and deed of trust to
3 Fremont, was induced and ultimately compelled by Defendants' misrepresentations to litigate
4 actions that were illegitimately commenced, and were maintained and supported against the
5 Plaintiff.

6 136. As a direct and proximate result of the negligence and/or gross negligence of the
7 Defendants the Plaintiff has suffered substantial financial injuries including the loss of title and
8 possession to their Property.

9 **WHEREFORE**, based upon the foregoing, the Plaintiff is entitled to judgment that Defendants
10 have defrauded the Plaintiff by misrepresentation. As a direct result of Defendants' fraud by
11 misrepresentation, the Plaintiff has been damaged and seeks damages in the amount of
12 \$1,000,000.00, an award of attorney's fees and costs, and for all other relief this Honorable Court
13 finds appropriate.

14 **COUNT VII - BREACH OF 15 U.S. C. §1635 and Declaratory, Injunctive and
15 Supplemental Relief**

16 137. The Plaintiff incorporates by this specific reference all preceding introductory
17 paragraphs of this complaint and paragraphs 1-66 as if fully restated herein.

18 138. On August 31, 2005, Plaintiff sent a Notice of Rescission of loan documents and loan
19 transaction to Real Opportunity, successor to Princess Properties.

20 139. The Notice of Rescission was recorded at the Solano County Recorder's Office
21 pursuant to State of California Civil Code 1695.14(a), (b), (c), on September 1, 2005.

22 140. In *Real Opportunity Investment v. Randhawa*, BONY filed a cross complaint seeking
23 (1) declaratory relief; (2) equitable subrogation; (3) judicial foreclosure, and (4) quiet title.

1 141. BONY filed a Motion for Summary Judgment in *Real Opportunity Investment v.*
2 *Randhawa.*

3 142. In the Order after hearing dated December 14, 201, The Court found that “..no
4 evidence is currently before the court to establish the standing of either Moving Party, as assignee
5 or successor in interest of either of the subject loans or deeds of trust.” The Court found BONY
6 unable to show its interest in the loan or deed of trust.
7

8 143. In light of the Court’s ruling BONY dismissed its cross complaint.

9 a. It is incontrovertible that the Rescission Notice was received.
10 b. It is incontrovertible that that no creditor initiated any compliance with the three
11 statutory duties imposed by 15 U.S.C. §1635.
12 c. It is incontrovertible that no creditor has ever filed suit seeking to vacate the rescission
13 that was effective upon mailing pursuant the aforesaid statute.
14

15 d. It is incontrovertible that the rescission was effective upon mailing.
16 e. It is incontrovertible that the rescission, by operation of law, made both the note and
17 encumbrance void and replaced the old loan contract with a new statutory loan contract in which
18 the owner of the debt would be paid and the borrower would be able to obtain new financing.
19 f. It is incontrovertible that no party has ever been described by these Defendants as the
20 real owner of the debt.
21

22 g. Notwithstanding the above, Defendants asserted claims based upon void instruments
23 that were fraudulently obtained and created.

24 144. More than twenty-days have expired since the receipt of said Notice of Rescission by
25 Princess Properties.

26 a. No party has complied with the Notice of Rescission as required by 15 U.S.C.
27 §1635.
28

1 b. No party has filed a lawsuit (as expressed in the Act) seeking to vacate the rescission,
2 which was effective on the date of mailing and remains effective through the date of filing of this
3 lawsuit. All rescissions are effective by operation of law upon mailing, whether disputed or not.
4

5 c. BONY was well aware of the Notice of Rescission as they have made unsuccessful
6 efforts to expunge the Qualified Notice of Rescission in a prior case and they have failed to
7 comply with the Statutory duties set forth in 15 U.S.C. §1635 et seq and have failed to file a
8 lawsuit disputing the rescission within their 20 day window of opportunity as also set forth in the
9 TILA Rescission statutes, as aforesaid; Plaintiff does not know if such failure is because the
10 original “transaction” was not consummated as described in the loan paperwork (no
11 consummation), or if Defendant is simply ignoring applicable statutes, Regulation Z, and the
12 Supreme Court of the United States (*Jesinoski v Countrywide*).
13

14 d. Princess Properties, Sierra Pacific and BONY are in violation of the statutory duties in
15 15 U.S.C. §1635 et seq in failing to comply with the statutory duties and in their continuing use
16 of the void promissory note and the void deed of trust during the foreclosure proceedings,
17 culminating in the eventual sale of Plaintiff's property and the eviction process.
18

19 145. As set forth in TILA 15 U.S.C. §1635 et seq. (Congressional Act), and the applicable
20 extension of the legislative Act as provided in Regulation Z (from the executive branch of the
21 Federal Government), and SCOTUS (representing the third and last branch of government to join
22 in agreement as to the effect of the Notice of Rescission) the loan contract was cancelled by
23 operation of law upon mailing the Notice of Rescission, which in turn resulted in the subject note
24 and deed of trust becoming void, as a matter of law, by operation of law. All three branches of the
25 Federal government consider this to be a settled issue.
26

27 146. The loan contract was cancelled by operation of law on the date of mailing.
28

29 147. The note was rendered “void” by operation of law on the date of mailing.
30

1 148. The deed of trust was rendered "void" by operation of law on the date of mailing.

2 a. Notwithstanding the above, the Defendant BONY foreclosed on Plaintiff's property.

3 149. Under TILA, if BONY claims to be a creditor or an authorized representative of the
4 owner of the debt (i.e., a creditor), is required to comply with the rescission within twenty-days of
5 receipt by performing three acts:

6 a. Return of the cancelled note;

7 b. Filing in the county records such instrument that would release any encumbrance or lien arising
8 out of the cancelled loan contract; and

9 c. Payment of all money received from the Plaintiff, plus interest, attorney fees, costs and other
10 damages, on behalf of the Plaintiff, and all money paid for fees, commissions or other
11 compensation in connection with the alleged origination of the loan contract.

12 150. Not actually being a creditor BONY failed and/or refused to perform duties under
13 TILA. In fact, despite its knowledge of the rescission, BONY continued to ignore the rescission
14 and proceeded to foreclose upon Plaintiff's property in a willful violation of the statute and
15 willful failure to comply with the duties after Notice of Rescission was sent.

16 151. By operation of law, the rescission is effective as of the date and time of mailing and
17 no lawsuit is required by the Plaintiff to effectuate the rescission, as this has already been
18 completed by operation of law which only requires that, in order to be effective, the notice of
19 Rescission must be mailed; and no tender of any payment is required from the Plaintiff as per
20 the specific provisions set forth in the clear and specific statutory scheme for non-judicial
21 cancelation of the loan contract, note and mortgage in 15 U.S.C. §1635.

22 152. As of the date of foreclosure of Plaintiff's property there was no note, there was no
23 deed of trust as a matter of law and there was no loan contract. What was left were statutory
24 duties described above that were completely ignored by the BONY.

1 **WHEREFORE**, Plaintiff respectfully requests this Honorable Court award damages in Plaintiff's
2 favor against Defendants Princess Properties, Sierra Pacific, BONY and MERS for their actual or
3 statutory damages, whichever is greater, and an award of attorney's fees and costs and for all
4 other relief this Honorable Court finds appropriate.
5

6 **COUNT VIII- UNJUST ENRICHMENT AS TO ALL DEFENDANTS**

7 153. The Plaintiff incorporates by this specific reference all preceding introductory
8 paragraphs of this complaint and paragraphs 1-66 as if fully restated herein.

9 154. The Defendant BONY has completed a foreclosure with the full knowledge that they
10 obtained title to the Property through fraud and that they were not the owners or the beneficiaries
11 of the mortgage and note upon which they filed the aforesaid actions.

12 155. It was and remains the deliberate and intentional purpose and goal of BONY's
13 foreclosure proceedings and their eviction proceedings at the outset of their respective actions, to
14 deceive the Plaintiff and the Superior Court of Solano County into believing said Defendants
15 possess bona fide mortgage and note ownership and/or title to the property and therefore the
16 requisite standing and capacity to sue when they did not.

18 156. BONY obtained title through fraudulent means, and then fraudulently constructed,
19 forged, falsely witnessed and/or notarized and filed or caused to be filed, phony and fabricated
20 foreclosure litigation documents for the sole and express purpose of illegally foreclosing upon the
21 Plaintiff Property and subsequent eviction.

23 157. Sierra Pacific claimed to be the owner of two notes secured with two deeds of trust
24 from Aster all the while they knew, or should have known, Aster obtained title to the Property by
25 fraudulent means.

26 158. Sierra Pacific claimed they owned the note secured with the deed of trust on the
27 property, when in fact they did not.
28

1 159. The deceptive criminal scheme of the Defendants will unjustly enrich each of the
2 Defendants to the detriment of the Plaintiff through Defendants' receipt of mortgage payment
3 proceeds and foreclosure sale proceeds they were not entitled to receive.

4 160. The Plaintiff was injured relative to his property, lost his cash and personal
5 investment in the subject property. Further, the Plaintiff was never informed that, or consented to,
6 his deed of trust, note and property being cross-collateralized and double encumbered as
7 collateral for mortgage backed securities.

8 161. Upon information and belief, the Plaintiff's monthly mortgage payments made to
9 Fremont were not due and owing to said Fremont. Fremont did not fund the Plaintiff's mortgage
10 and they were not the holders in due course of the note.

11 162. Sierra Pacific, having obtained title to Plaintiff's Property through fraudulent means,
12 had no right, title and interest in Plaintiff's Property.

13 163. Sierra Pacific, having no right, title and/or interest in Plaintiff's Property had no
14 authority or right to assign the mortgage and note to BONY.

15 164. BONY, having obtained no right, title and/or interest in Plaintiff's Property from
16 Sierra Pacific had no right to foreclose upon Plaintiff's Property and seek eviction of Plaintiff.

17 165. Defendants had actual and/or constructive knowledge of the negligence of its
18 employees and/or agents Defendants failed to intercede to protect Plaintiff's interest from such
19 harm.

20 166. The actions of Defendants and their employees and/or agents constitute negligence
21 and/or gross negligence where the handling of files was improper in allowing employees and/or
22 agents to proceed as though they were the owner of the debt.

23 167. The Plaintiff reasonably relied upon each and every material misrepresentations as
24 described above to his detriment.

1 **WHEREFORE**, based upon the foregoing, the Plaintiff is entitled to judgment that
2 Defendants have been Unjustly Enriched. As a direct result of Defendants' Unjust Enrichment,
3 the Plaintiff have been damaged and seek damages in the amount of \$1,000,000.00, an award of
4 attorney's fees and costs, and for all other relief this Honorable Court finds appropriate.
5

6 **COUNT IX - DISGORGEMENT**

7 168. The Plaintiff incorporates by this specific reference all preceding introductory
8 paragraphs of this complaint and paragraphs 1-66 as if fully restated herein.

9 169. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief,
10 including rescission or reformation of contracts, restitution, the refund of monies paid, and the
11 disgorgement of ill-gotten monies.

12 170. "As a general rule, where money is paid under a mistake of fact, and payment would
13 not have been made had the facts been known to the payor, such money may be recovered." Bank
14 of Naperville v. Catalano, 86 Ill. App. 3d 1005, 408 N.E.2d 441, 444, 42 Ill. Dec. 63 (Ill. App.
15 1980).

16 171. The Plaintiff, had he known the Defendants did not fund any loan to them, would not
17 have made payment to strangers to the putative subject loan transaction, unless the party was
18 authorized by a disclosed owner of the debt to do so. Defendants continue their concealment of
19 information that very relevant law and doctrine mandates to be disclosed to a supposed borrower.
20

21 172. The Plaintiff mistakenly believed that the Fremont was entitled to collect payments
22 and enforce the subject promissory note. Therefore, once Plaintiff received Notice of Foreclosure
23 from Fremont and he was approached by Princess Properties, Plaintiff fell subject to Princess
24 Properties illegal scheme because he believed that Fremont had the right to foreclose.

25 173. The Defendants caused documents to be executed purporting to state that MERS was
26 acting as an agent of Sierra Pacific and recorded an assignment of the Aster's two deeds of trust
27

1 with the Solano Registry of Deeds from Sierra Pacific to BONY. BONY then initiated
2 foreclosure, foreclosed upon Plaintiff's Property and filed an eviction proceeding. Fremont
3 accepted the Plaintiff mortgage payments, when in fact, the Defendants did not validly hold the
4 mortgage note, and therefore were not entitled to the payments.
5

6 174. Sierra Pacific obtained \$523,316 when it allegedly sold the loan to BONY.
7

8 175. The Plaintiff seek to have an Order entered to disgorge money the Defendants
9 received from him for any alleged debt and any ill-gotten gains from the transaction relating from
10 any alleged debts and the foreclosure and sale of Plaintiff's Property and for an accounting from
11 each Defendant relating to the Plaintiff's alleged loan and/or any trading or profits based upon the
12 subject loan and foreclosure.

13 **WHEREFORE** the Plaintiff prays this honorable court will enter an order requiring
14 disgorgement to them of all money allocable to the Plaintiff derived from ill-gotten gains or
15 unlawful collection, together with attorney fees to the extent permitted by law, court costs,
16 expenses and such other and further relief as the Court may deem just and proper.

17 **COUNT X - INJUNCTIVE RELIEF**
18

19 176. The Plaintiff incorporates by this specific reference all preceding introductory
20 paragraphs of this complaint and paragraphs 1-66 as if fully restated herein.

21 177. The Plaintiff respectfully requests this Honorable Court order an Injunction against
22 Defendants preventing Defendants from asserting any claim to the debt, note or mortgage or title
23 and requiring them to execute such documentation as may be requested by any lender or title
24 insurance company for refinancing or any buyer in the sale of the subject property.
25

26 178. Due to the various injuries caused by Defendants detailed in in this Complaint above,
27 the Plaintiff is being irreparably harmed by the illegal foreclosure and eviction actions filed by
28 BONY.

1 179. The Plaintiff has no other remedy at law but to seek the relief requested herein.

2 Equity favors the Plaintiff as they have no adequate remedy at law.

3 **WHEREFORE** the Plaintiff respectfully request this Honorable Court grant them an Injunction
4 preventing the Defendants from asserting any claim to the debt, note or mortgage or title and
5 requiring them to execute such documentation as may be requested by any lender or title
6 insurance company for refinancing or any buyer in the sale of the subject property.

7

8 **PRAYER FOR RELIEF AS TO COUNTS I and X**

9 **WHEREFORE**, Plaintiff prays for the following relief:

10 Entry of an order declaring the rights of the parties, to wit:

11 1. Entry of an order declaring the rights of the parties, enjoining the defendants from
12 asserting any interest in the subject property or loan, and order Defendants to file instruments that
13 release all claims to the subject property from Defendants, including any grant deeds necessary to
14 restore title to the Plaintiff; all documents necessary to release all claims from the Defendants as
15 to their right to administer or service a loan that no longer exists and their successors and assigns
16 and order all Defendants to disclaim and vacate all claims and for an issuance of a writ of
17 possession or restitution to the sheriff or other proper officer of Solano County, State of
18 California.

19

20 2. Enter an order requiring disgorgement to them of all money allocable to the Plaintiff
21 derived from ill-gotten gains or unlawful collection, together with attorney fees to the extent
22 permitted by law, court costs, expenses and such other and further relief as the Court may deem
23 just and proper.

24

25 3. Enter an order granting the Plaintiff an Injunction preventing the Defendants from
26 asserting any claim to title to the Property, the debt, note or deed of trust and requiring them to
27 execute such documentation as may be requested by any lender or title insurance company for

1 refinancing or any buyer in the sale of the subject property in which they disclaim all right, title or
2 interest to the subject property or the subject loan documents.

3 **PRAYER FOR RELIEF AS TO COUNTS II, III, IV, V, VI, VII, VIII, IX**

4 **WHEREFORE**, Plaintiff prays for the following relief:

5 1. Enter a verdict for the Plaintiff and against all Defendants individually, jointly and
6 severally for compensatory damages in excess of \$1,000,000, together with expenses, court costs
7 and attorney's fees to the extent allowable by statute, contract or implied contract.

8 2. Further, the Plaintiff gives notice of his intent to provide the court with a reasonable
9 showing of evidence or proffers by the Plaintiff that would provide the basis for recovery of
10 punitive damages, and to amend their pleadings in accordance with such evidence and proffers to
11 plead the grounds for punitive damages and to demand payment thereof from all Defendants,
12 individually, jointly and severally on all counts in which money damages are demanded.

13 **PLAINTIFF DEMANDS A TRIAL BY JURY IN THIS ACTION OF ALL ISSUES
14 TRIABLE BY RIGHT OF JURY TRIAL.**

15
16
17 I declare under penalty of perjury under the law of state of California that the forgoing is
18 true and correct to the best of my knowledge. Executed on this 20 February 2019 at Fairfield
19 California.

20
21 Respectfully submitted.

22
23
24 DATED February 20, 2019


IQBAL S. RANDHAWA