No. 21-1361

In the Supreme Court of the United States

MARGUERITE DESELMS,
INDIVIDUALLY AND AS TRUSTEE OF THE CIRCLE ROAD REVOCABLE LIVING TRUST DATED NOVEMBER 11TH, 2010,

Petitioner,

v.

THE BANK OF NEW YORK MELLON,
FKA THE BANK OF NEW YORK AS TRUSTEE FOR THE CERTIFICATE HOLDERS CWALT, INC., ALTERNATIVE LOAN TRUST 2006-OC8 MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-OC8 ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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MARCH 14, 2022
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QUESTION PRESENTED

The securitization of a mortgage into a closed trust require that the servicer carry PMI on every loan, and that any default is paid in full by the collection of that insurance, satisfying the mortgage. In the instant case, the insurance recovery was not credited to the borrowers account, unjustly enriching the lender. Ambac Assurance came before the district court and admitted in their opening brief that they paid this trust in full but the lender never credited that payment to the Appellant's mortgage account. This was accomplished in the name of a trust which no longer existed, by obtaining foreclosures in the name of an unlicensed, non-registered trust. This entity sought a triple-bonanza of payouts from the parties connected to these mortgages by obtaining three separate payouts—first, by filing fraudulent class actions and false billing statements; second, by collecting PMI proceeds without crediting Petitioners' mortgage; and third, by profit on sale of Petitioners' property.

The Questions Presented Is:

Whether a non-existent entity, who could not lawfully securitize a note and mortgage into an already closed trust, have standing or capacity to do business, acquire a mortgage and foreclose?

PARTIES TO THE PROCEEDINGS

Petitioner

- Marguerite DeSelms, Petitioner Pro Se

Respondents

- BANK OF NEW YORK MELLON, FKA THE BANK OF NEW YORK AS TRUSTEE FOR THE CERTIFICATE-HOLDERS CWALT, Inc., Alternative LOAN TRUST 2006-OC8 Mortgage Pass-Through Certificates, Series 2006-OC8, a non-existent, closed trust who never had standing to foreclose. There is no trust. The trust has been closed and decertified and does not exist and is not registered to do business in this State. The disclosure statement should reflect the birth certificate of the trust and its current existence and standing to litigate pursuant to FRAP 26-1.
- ALAN DAVID TIKAL, AS TRUSTEE OF THE KATN REVOCABLE LIVING TRUST, an individual.
- CAA INC., a Nevada Corporation.

LIST OF PROCEEDINGS

United States Court of Appeals for the Ninth Circuit

No. 20-55993

THE BANK OF NEW YORK MELLON, FKA The Bank of New York, as Trustee for the Certificate Holders CWALT, Inc. Alternative Loan Trust 2006-OC8 Mortgage Pass-Through Certificates, Series 2006-OC8, *Plaintiff-Counter-Defendant-Appellee, v.* ALAN DAVID TIKAL, as Trustee of the KATN Revocable Living Trust; CAA, Inc., a Nevada corporation, *Defendants, and* MARGUERITE DESELMS, Individually, and as Trustee of the Circle Road Revocable Living Trust Dated November 11, 2010, *Defendant-Counter-Claimant-Appellant*

Date of Final Order: November 18, 2021

Date of Rehearing Denial: December 27, 2021

United States District Court for the Central District of California

No. 5:18-cv-1044-PSG-MRW

THE BANK OF NEW YORK MELLON, FKA The Bank of New York, as Trustee for the Certificate Holders CWALT, Inc. Alternative Loan Trust 2006-OC8 Mortgage Pass-Through Certificates, Series 2006-OC8, *Plaintiff,* v.
MARGUERITE DESELMS, Individually, and as Trustee of the Circle Road Revocable Living Trust Dated November 11, 2010, ALAN DAVID TIKAL, as Trustee of the KATN Revocable Living Trust; and CAA, INC., a Nevada corporation, *Defendants*

Date of Final Judgment: August 28, 2020

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, MARGUERITE DESELMS, respectfully submits this petition for a writ of certiorari. If the court considers this petition, the Petitioner will retain qualified counsel for oral argument.

OPINIONS BELOW

The Opinion of the United States Court of Appeals for the Ninth Circuit was entered on November 18, 2021 and is included at App.1a. The Order of the United States District Court for the Central District of California, dated August 27, 2020, granting summary judgment to the Plaintiff is included at App.27a. The Judgment of the district court, dated August 28, 2020, is included at App.27a.

JURISDICTION

The United States Court of Appeals, for the Ninth Circuit denied a timely filed petition for rehearing on December 27, 2021. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const., amend. V

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const., amend. XIV, § 1

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Cal. Corp. Code § 2105

(a) A foreign corporation shall not transact intrastate business without having first obtained from the Secretary of State a certificate of qualification. To obtain that certificate it shall file, on a form prescribed by the Secretary of State, a statement and designation signed by a corporate officer stating:

(1) Its name and the state or place of its incorporation or organization.

(2) The address of its principal executive office.

(3) The address of its principal office within this state, if any.

(4) The name of an agent upon whom process directed to the corporation may be served within this state. The designation shall comply with the provisions of subdivision (b) of Section 1502.

(5)

(A) Its irrevocable consent to service of process directed to it upon the agent designated and to service of process on the Secretary of State if the agent so designated or the agent's successor is no longer authorized to act or cannot be found at the address given.

(B) Consent under this paragraph extends to service of process directed to the foreign corporation's agent in California for a search warrant issued pursuant to Section 1524.2 of the Penal Code, or for

any other validly issued and properly served search warrant, for records or documents that are in the possession of the foreign corporation and are located inside or outside of this state. This subparagraph shall apply to a foreign corporation that is a party or a nonparty to the matter for which the search warrant is sought. For purposes of this subparagraph, "properly served" means delivered by hand, or in a manner reasonably allowing for proof of delivery if delivered by United States mail, overnight delivery service, or facsimile to a person or entity listed in Section 2110 of the Corporations Code.

(6) If it is a corporation which will be subject to the Insurance Code as an insurer, it shall so state that fact.

(b) Annexed to that statement and designation shall be a certificate by an authorized public official of the state or place of incorporation of the corporation to the effect that the corporation is an existing corporation in good standing in that state or place or, in the case of an association, an officers' certificate stating that it is a validly organized and existing business association under the laws of a specified foreign jurisdiction.

(c) Before it may be designated by any foreign corporation as its agent for service of process, any corporate agent must comply with Section 1505.

Fed. R. Civ. P. 9. Pleading Special Matters

(a) Capacity or Authority to Sue; Legal Existence.

(1) In General. Except when required to show that the court has jurisdiction, a pleading need not allege:

(A) a party's capacity to sue or be sued;

(B) a party's authority to sue or be sued in a representative capacity; or

(C) the legal existence of an organized association of persons that is made a party.

(2) Raising Those Issues. To raise any of those issues, a party must do so by a specific denial, which must state any supporting facts that are peculiarly within the party's knowledge.

INTRODUCTION

The issue before this Court is of Great Social Importance, especially in light of the plethora of foreclosures which were obtained by means of illegally securitizing a mortgage into a closed trust, thereby voiding the mortgage. These trusts require that the servicer carry PMI on every loan, and any default is paid in full by the collection of that insurance, satisfying the mortgage. That insurance was non-subrogable. That insurance recovery was not credited to the borrowers account, unjustly enriching the Lender at the expense of the borrower. This was all accomplished in the name of a trust which no longer existed. These non-existent closed trusts obtained foreclosures in the name of a non-registered trust, not licensed to do business in the State, after the lender/investor had

been paid in full at least twice before taking the borrowers home for a triple play. The first time the Lender/Investors recovered payment in full from the class actions the investors filed against the trust, against the brokers who set up the trusts, against the servicers who put Appellant and other borrowers into default by billing amounts that were neither due nor owing, and by telling the borrower to stop making payments (as occurred here), and others who put them into the bad investment. They recovered a second time by taking payment in full from the Private Mortgage Insurance policy that is non-subrogable. Then, after recovering twice, they sell the Appellants and other borrowers' home for a generous profit. The Trust has no standing to sue, and the trustee, when they are subsequently sued, claim that they are innocent and it is revealed that there is no trust, the trustee is a nominal trustee only, and the Trustee has permitted the servicer to use their name to give credibility and to fabricate standing for a non-existent entity.

Plaintiff-Appellee, a non-existent ghost, which would not prove their birth certificate or existence, proof of possession of any authentic original note or mortgage, and would not provide proof of standing or capacity to sue, convinced the lower court to grant a summary judgment in its favor while discovery was pending seeking the discovery of those items. There is no trust called THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK, AS TRUSTEE FOR THE CERTIFICATE HOLDERS CWALT, INC. ALTERNATIVE LOAN TRUST 2006-OC8 MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-OC8 ("BONY AS TRUSTEE"), it is not registered to do business in this state, is not registered as a debt collector and is doing

business in this state unlawfully, buying and selling property and collecting debts. Defendant demanded the Plaintiff provide a Birth Certificate. The Plaintiff sued the Defendant DeSelms to remove a first deed of trust from the chain of title. Plaintiff did not record the first deed of trust. Defendant, in her first affirmative defense claimed that BONY AS TRUSTEE Plaintiff had no standing to challenge the deed of trust and note.

On the other hand, Defendant did challenge in her counterclaim the note and deed of trust asserted by the Plaintiff. The note and mortgage which were recorded are forgeries and the Defendant, from the outset, claimed they are not authentic; demanded that the Plaintiff produce the original documents (which they refused to produce, even during discovery) and did not provide when they filed for summary judgment. They never produced the forged documents but wrote up an order for the judge to sign calling the deed of trust they challenged as a first deed of trust as a "fake Deed of Trust". Defendant/Cross-Complainant/ Appellant, in her affirmative defense, said that Plaintiff had no capacity to sue and had no standing to sue, "Plaintiff, months after falsely representing that all interest was conveyed to Bank of America, they fabricated and then recorded an assignment of deed of trust. Edward Gallegos, falsely claiming to be an assistant secretary for MERS does not work as a secretary for MERS, nor is he employed by MERS, nor is he employed by Bank of New York Mellon, but is a Bank of America employee. Said document was forged and executed in California. California has strict statutes prohibiting the recording of false documents in the official records, and that constitutes a FELONY

pursuant to Penal Code Section 487 et seq., and Penal Code Section 115 et seq.

What's worse, is that according to the BONY AS TRUSTEE, the trust was closed in 2006, and could not hold the note and/or deed of trust, and further, Bank of America sued BONY Mellon over this specific mortgage and settled by agreeing to pay Bank of America and/or Countrywide shall pay or cause to be paid eight billion five hundred million dollars ($8,500,000,000.00). https://www.sec.gov/Archives/edgar/data/70858/000119312511176452/dex992.htm. That claim was specifically because the Institutional Investors have provided notice pursuant to certain of the Governing Agreements claiming failure by Bank of America and Countrywide, and affiliates, divisions, and subsidiaries thereof, to perform thereunder, and have alleged Mortgage Loan-servicing breaches and documentation defects against Bank of America and Countrywide, and affiliates, divisions, and subsidiaries thereof, and Bank of America Paid for the wrongdoings committed by Bank of America against Plaintiff for the acts complained of herein by the Defendant. As an actual and proximate cause of their entry into this agreement, BONY is collaterally estopped from asserting that they had committed wrongdoing against the Defendant in this case, having paid 8.5 billion dollars for the commission of those wrongs, and further cannot claim the Defendant is without standing to asset those wrongdoings, as the Defendant was the direct victim of that harm, and they agreed to pay the members of the trust, who also objected to the same exact treatment of the Defendant and were awarded for that harm. As a result of this agreement, BONY is collaterally estopped from

asserting that the DEFENDANT has no standing to object to the validity of the assignments.

Additionally, if thay make such a claim, they themselves are barred from asserting that the deeds are void or voidable. *See* Exhibit 10 BOA *Notice of Assignment, Sale or Transfer of Servicing Rights*, November 23rd, 2011. Bank of America owned nothing it could transfer, including the servicing rights. The Bank of America was not ever the holder and owner of the note and deed of trust and did not have the servicing rights as it falsely claimed. Furthermore, Specialized Loan Servicing could not be the loan servicer of the BONY AS TRUSTEE. *See Substitution of Trustee,* Official Records of San Bernardino, Document #2014-025564, July 15th, 2014.

Similarly, the BONY AS TRUSTEE was not a lawful owner and holder of the note and deed of trust, and therefore did not have any power to substitute the trustee or take any further action whatsoever. The trustee cannot be substituted as evidenced above, the bank could not be a lawful holder of the note and deed of trust, as it was not validly transferred, as the trust was closed, the servicing mishandled, and then Bank of America was sued and paid out 8.5 billion. The BONY AS TRUSTEE was closed at the time of the purported conveyance and according to the law of the States of New York and of Delaware, which is, according to the terms of the PSA, and the incorporating documents are the states where the governing applicable law should be applied, not California. *See Notice of Default and Election to Sell Under Deed of Trust,* Official Records of San Bernardino, County, #2014-0255625, July 15th, 2014. *See also* the *Notice of Rescission of Declaration of Default and Demand for*

Sale and Notice of Breach and Election to Sell Under Deed of Trust, Official Records of San Bernardino County, Document 2015-0042564, February 3rd, 2015. *See Notice of Default*, Official Records of San Bernardino County, #2017-0500430, November 22nd, 2017.

There is clearly a break in the chain of assignments or substitutions of trustees. There has never been a valid substitution of trustee to put BANK OF AMERICA, N.A. or MTC FINANICAL INC. DBA TRUSTEE CORPS as trustee in place of the last substituted trustee. There is ample case law establishing that the documents which purport to assign the mortgage are void. According to *Roman Pino v. the Bank of New York Mellon, fka the Bank of New York, as Trustee for the Certificateholders of Cwalt, Inc., Alternative Loan Trust 2006-OC8, Mortgage Pass Through Certificates 2006-0C8, SC11-697*, No. 4D10-378 (USDC Florida DCA4 2011), the Defendant in that case was a purported recipient of the mortgage in the same manner as in the Florida Supreme Court case, and the premier case which blew up the mortgage industry in 2013. For the foregoing reasons, the notice of default is void, notice of sale is void, and the Plaintiff has no standing to obtain any of the relief sought or any rights whatsoever. *See Grant Deed*, Official Records of San Bernardino County, #2017-0226015, June 1, 2017. *See also Notice of Trustee's Sale,* Official Records of San Bernardino County, #2018-0085594, March 9th, 2018. The Notice falsely and fraudulently necessarily claims that the chain of assignments are valid, when the records, and even the landmark Florida case against this specific assignee, BONY AS TRUSTEE, clearly shows that the Plaintiff was a victim of fraudulent preparation and recording of documents which are in

direct violation of the PSA, the settlement agreement, and directly contrary to the laws of both the State of California, New York and Delaware. Even the trustee has never been validly appointed. This Court cannot enforce an illegal contract.

Finally, allegations of an attorney's filing of fraudulent documents in connection with his or her client's lawsuit would warrant a referral of that attorney to The Florida Bar for a possible violation of the Code of Professional Responsibility. *See Roman Pino.* That as an actual and proximate cause of the conduct of the Plaintiffs, and each of them, and their purported predecessors in interest, the Defendant has suffered damages in an amount according to proof. That the Plaintiff's fraudulent and improper use of the non-judicial foreclosure process was the actual and proximate cause of the same the Defendant suffering damages according to proof and are intended to cause, and continue to cause severe emotional distress, anger, upset and grief, as intended or foreseeable by the Defendants and their Employees, officers and agents. The Defendant challenges the chain of assignments and the suit by Bank of New York Mellon clearly shows that they have no standing to bring this action. Bank of America refused to participate in this action because they cannot, under the consent decree, participate in any more felonies regarding recorded documents, and clearly, the only felonious documents in the official records are those fabricated and recorded by BONY. Because Bony has no interest now to protect, it has no standing to maintain this action. *See Answer* ¶9, *Vaughn v. Dame Construction Co.*, No. E006556. (Cal. Fourth Dist. Aug. 10, 1990).

STATEMENT OF THE CASE

This case arises as a result of a complaint by the Plaintiff for damages and declaratory relief over their homestead home. Appellee sued to vacate a first deed of trust. Appellant did not record the first. Appellant sued the Appellee because their mortgage upon which they claimed an interest in the subject property is void, satisfied in full at least twice (first by collection of payment in full of private mortgage insurance and second by reason of a class action lawsuit filed by the Lender against the trust, the trustee, the servicer and the brokers who set up the trust. After being paid in full twice, and with fraudulent documents, including a forged note and mortgage, the Appellee, which does not exist, sued even though they are not licensed to do business in this state, are not a registered trust, and are barred from doing business here. That the subject mortgage was securitized into a closed trust, voiding it and the original documents do not exist. Appellant was sued by a ghost with no standing, no capacity to sue, no original documents and not even a retainer agreement with their attorney. Ignoring all the affirmative defenses, lack of standing, lack of capacity and lack of original documents, the court granted them all the relief sought and denied all the relief by the Appellant. Appellants alleged that the trust had no legal capacity to foreclose; the mortgage was satisfied; and the Defendant was unjustly enriched as now discovered through the admissions by Ambac Assurance in the brief they filed in this Court.

REASONS FOR GRANTING THE PETITION

I. *DE NOVO* STANDARD ON APPEAL SUMMARY JUDGMENT.

De novo review is standard. This Court may only grant summary judgment in favor of Plaintiff if "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *Alexander v. FedEx Ground Package Sys., Inc.*, 765 F.3d 981, 987 (9th Cir. 2014). That is, Plaintiff was only entitled to summary judgment only if, viewing the evidence in the light most favorable to the Appellant, not the Appellee as occurred here, this Court necessarily must conclude that Plaintiffs are not entitled to summary judgment. *Id.* at 988. *O'Connor v. Uber Technologies, Inc.*, 82 F. Supp. 3d 1133 (USDC ND Cal. 2015). A genuine issue for trial exists if the non-moving party presents evidence from which a reasonable jury, viewing the evidence in the light most favorable to that party, could resolve the material issue in his or her favor. *Anderson*, 477 U.S. 242, 248-49; *Barlow v. Ground*, 943 F.2d 1132, 1134-36 (9th Cir.1991).

II. THE LOAN WAS PAID IN FULL BY PMI, WHEN THE DEFAULT WAS FIRST CLAIMED, SO ANY ACTION TAKEN AFTER THAT TIME WAS FRAUDLENT AND THE FAILURE TO CREDIT THE PAYMENT WAS WRONGFUL, AND THE REFUSAL OF THE COURT TO PERMIT PLAINTIFF TO PROVE THE MORTGAGE WAS SATISFIED VIOLATES DUE PROCESS, EQUAL PROTECTION, AND IS AN UTTER ABUSE OF EQUITY.

CA Civ Code § 2941, et seq. which requires the recording of the satisfaction of mortgage within 30 days of the date that it was paid in full. The Defendants have failed to comply with the statute. This court has already heard the case where the insurance company sued the trust to interfere with the settlement between the trust and Bank of America for the failure of Countrywide. *See In the Matter of Harborview Mortgage Loan Trust 2005-10, Ambac Insurance Corporation v. US Bank National Association* (U.S. No. 18-1067)[1].

III. THERE IS A REQUIREMENT THAT THERE EXIST AN ACTUAL CONTROVERSY BETWEEN REAL PARTIES THAT EXIST.

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[1] In US Bank's responsive petition, it admits that "HarborView Mortgage Loan Trust 2005-10 is one such trust. The Trust, like other RMBS trusts, holds a pool of residential mortgage loans for the benefit of investors, who make money from the principal and interest payments borrowers make on those loans. *See* generally *Fixed Income Shares: £Series M v. Citibank N.A.*, 130 F. Supp. 3d 842, 846 (S.D.N.Y. 2015). The more than 4,000 loans held by the Trust were originated by Countrywide Home Loans, Inc., and then sold to Greenwich Capital Acceptance, Inc. ("GCA") and Greenwich Capital Financial Products, Inc. ("GCFP"). App.6a. In 2005, GCA, GCFP, and U.S. Bank entered into a Pooling Agreement, pursuant to which the loans were aggregated into a trust for which U.S. Bank would serve as trustee. *Id.* at

The Declaratory Judgment Act protects potential defendants from multiple actions by providing a means by which a court declares in one action the rights and obligations of the litigants. 28 U.S.C. § 2201. A declaratory judgment will not expand a federal court's jurisdiction, but if jurisdiction exists, litigants have earlier access to federal courts to spare potential defendants from the threat of impending litigation. *Skelly Oil Co. v. Phillips Petroleum Co.*, 339 U.S. 667 (1950); *Seattle Audubon Soc'y v. Moseley*, 80 F.3d 1401, 1405 (9th Cir. 1996). Declaratory judgment actions are justiciable only if there is an "actual controversy." 28 U.S.C. § 2201(a). The "actual controversy" requirement is analyzed in the same manner as the "case or controversy" standard under Article III of the *United States Constitution. Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 239-40 (1937). The threshold question in any declaratory action thus is whether "there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy

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2a-3a. In connection with that Agreement, Countrywide made various representations and warranties regarding the quality and characteristics of the underlying mortgage loans and agreed to repurchase defective loans should that prove necessary. *See id.* at 3a. The Pooling Agreement assigned to U.S. Bank the right to seek a remedy against Countrywide for breach of those representations and warranties. *Id.* at 31a. Certificates based on the trust's assets were ultimately sold to investors, who hold a beneficial interest in the underlying loans and a right to the income flowing from borrower payments. *Id.* at 3a. Petitioner Ambac Assurance Corporation ("Ambac") is an insurer of some of those trust certificates. *Id.* In that role, Ambac guaranteed payment to certain certificate-holders in the event cash flow from the mortgage loans were ever to become inadequate and obtained a subrogated third-party beneficiary interest in the insured certificates. *Id.*

and reality to warrant the issuance of a declaratory judgment." *Maryland Cas. Co. v. Pacific Coal & Oil Co.*, 312 U.S. 270 (1941); *National Basketball Ass'n v. SDC Basketball Club, Inc.*, 815 F.2d 562, 565 (9th Cir. 1987). The "[m]ere possibility, even probability, that a person may in the future be adversely affected by official acts not yet threatened does not create an 'actual controversy' which is a prerequisite created by the clear language of the [Declaratory Judgment Act]...." *Garcia v. Brownell*, 236 F.2d 356, 358 (9th Cir.1956) cert. denied, 362 U.S. 963 (1960). The party invoking federal jurisdiction bears the burden of showing that it faces an immediate or actual injury. *Rincon Band of Mission Indians v. County of San Diego*, 495 F.2d 1, 5 (9th Cir.1974), cert. denied, 419 U.S. 1008 (1974)

IV. THE PLAINTIFF HAS NO STANDING TO SUE.

"Standing is a threshold matter central to our subject matter jurisdiction." *United States v. Hays*, 515 U.S. 737, 742 (1995). Here, the Defendant/Counter-claimant/Appellant has standing to sue because the subject mortgage held by the Plaintiff was securitized into a closed trust thereby voiding it. *Glaski v. Bank of America*, N.A., 218 Cal. App. 4th 1079 (2013), in which the court held that a borrower may have standing to challenge a foreclosure where the note holder acquired the note from a party who had been assigned it in a void transaction (under New York law). *Id.* at 1095. There, the note was assigned to a securitized trust after the date that the trust was closed for purposes of acquiring additional assets. *Id.* The trust in *Glaski* was formed under New York law, which the court interpreted to confer standing in the specific situation. *Id.* at 1097. The court noted that "some federal

district courts sitting in California have rejected the post-closing date theory of invalidity on the grounds that the borrower does not have standing to challenge an assignment between two other parties." *Id.* at 1098. The court distinguished those cases, however, because "they do not apply New York trust law to the operation of the securitized trusts in question." *Id.* at 1098. On the other hand, the Plaintiff has no standing to sue because they are not a Third-Party Beneficiary nor are they a party to the mortgage which they call a Fake First Deed of Trust. There is no case law that gives standing to a non-party to challenge another deed of trust, and certainly no case law which gives standing to the Plaintiff for a cause of action for "fake first deed of trust". Who says fake first deed of trust and wins? In thousands of cases, the Plaintiff has taken the position that a Defendant lack standing to challenge an assignment of mortgage where the Defendant is not a party to the assignment. *Due Process and Equal Protection*, words which have little meaning with the lower courts anymore, especially in foreclosure cases, dictate that Plaintiff has no standing to challenge the other deed of trust, fake or not. Federal law on judicial estoppel governs cases in federal courts regardless of whether they involve state law claims. *Rissetto v. Plumbers and Steamfitters Local 343*, 94 F.3d 597, 603 (9th Cir. 1996). It is an equitable doctrine that prevents a party from benefitting by taking one position but then later seeking to benefit by taking a clearly inconsistent position. *Hamilton v. State Farm Fire & Cas. Co.*, 270 F.3d 778, 782 (9th Cir. 2001). Judicial estoppel may be invoked by the court at its discretion. *Morris v. California*, 966 F.2d 448, 453 (9th Cir. 1992). Here, the Plaintiff is taking a

position that contradicts years and hundreds, if not thousands or tens of thousands of cases.

V. THE PLAINTIFF NEVER ESTABLISHED THIS COURT HAD JURISDICTION MAKING THE JUDGMENT VOID.

The law provides that once State and Federal Jurisdiction has been challenged it must be proven. *Main v. Thiboutot*, 448 U.S. 1 (1980). "A court lacking jurisdiction cannot render judgment but must dismiss the cause at any stage of the proceedings in which it becomes apparent that jurisdiction is lacking" *Bradbury v. Dennis*, 310 F.2d 73 (10th Cir. 1962). The burden shifts to the court to prove jurisdiction. *Rosemond v. Lambert*, 469 F.2d 416 (1972). "Generally, a plaintiff's allegations of jurisdiction are sufficient, but when they are questioned, as in this case, the burden is on the plaintiff to prove jurisdiction." *McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178 (1936); *Welsh v. American Surety Co.*, 186 F.2d 16 (5th Cir. 1951); 5 WRIGHT & MILLER, Sec. 1363 at 653 "...if the issue is presented in any way the burden of proving jurisdiction rests upon him who invokes it." *Latana v. Hopper*, 102 F.2d 188 (5th Cir. 1939). This decision and the authorities cited therein conclusively establish the rule that if the issue is presented in any way the burden of proving jurisdiction rests upon him who invokes it. Since plaintiff failed to sustain the burden of proving jurisdiction, there was nothing for the District Court to do but deny the relief sought by the Plaintiff. Instead, in direct violation of the entire history of the court, it granted affirmative relief to a *Non-Existent Ghost* Who Cannot Prove Its Existence or Birth Certificate. "When it clearly appears that the court lacks jurisdiction, the court has no authority to reach the merits. In such a situation the action should

be dismissed for want of jurisdiction." *Melo v. United States*, 505 F. 2D 1026.

With regard to all counts in the Complaint Plaintiff claims are barred in whole or in part because of its failure to plead its capacity to sue. Fed. R. Civ. P. 9, *supra.*

Here, the Defendant in its answer and affirmative defenses and in the counterclaim, raised the issues of standing and capacity to sue. The Court did not make any findings in response to these affirmative defenses; there was no evidence submitted proving the birth certificate, standing or capacity to sue and the court erred in granting the affirmative relief to a ghost Plaintiff that had no capacity to sue.

The rule also provides the specific procedures counsel must use to challenge the issue of the Plaintiff's status, *i.e.*, by specific negative averment. To that end, Defendants specifically averred that the Plaintiff has failed to plead its proper party capacity and thus Plaintiff cannot claim it has properly invoked the jurisdiction of this court.

Pursuant to Fed. R. Civ. P. 17(a), a "[p]laintiff must be the 'real party in interest,' with respect to the claim sued upon." Schwarzer et al., CALIFORNIA PRACTICE GUIDE: FEDERAL CIVIL PROCEDURE' BEFORE TRIAL, ¶ 7:1. However, "[a]n estate or trust is not a legal entity and has no capacity to sue. Title to an estate or trust assets held by an executor, administrator or trustee, on behalf of beneficiaries. Thus, as to Claims held by an estate or trust, the executor, administrator, or trustee is the real party in interest only to the extent that a trust exists." *Id.* 7:7 (citing Fed. R. Civ. P. 1740; *Karras*, 191 F.Supp.2d at 1171-

72) (emphasis in original). Furthermore, no case may be maintained unless there is a valid, registered Trust. *Id.* if 79 (citing. Fed. R. Civ. P. 17(a); *In re Davis*, 194 F.3d, 570, 578 (5th Cir.1999)). Here, no trust exists. It was not only closed when the mortgage was purportedly securitized into it (as evidenced by the late assignment), but also the registration of the trust with the SEC has been cancelled. There is no trust in the court and there is no trust in existence.

Plaintiff BONY AS TRUSTEE is the Trustee of a closed trust whose own trust documents violate New York Law. New York Law is applicable to the trust as set forth in the trust documents. The trust was closed before the purported acquisition of the forged documents by BONY's trust. The FDCPA's regulation of third party debt collectors does not apply to lenders attempting to collect on residential loans "which w[ere] originated by such [lender]," or reach a lender's servicing company where the "debt [] was not in default at the time it was obtained by such [servicing company.]" *See* 15 U.S.C. § 1692a(6)(F) (1986); *Lal v. Am. Home Servicing, Inc.*, 680 F. Supp. 2d 1218, 1224 (E.D. Cal. 2010). Here, at the time of the purported acquisition, BONY claimed that an arrears already existed from Bank of America, who has settled because they were guilty of misconduct. This case is a challenge to the principal's authority to foreclose rather than to whether an agent had the authorization of its principal to initiate foreclosure. The *Gomes* court specifically distinguished itself from *Ohlendorf v. American Home Mortgage Servicing*, 279 F.R.D. 575 (E.D.Cal.2010) in which "the plaintiff alleged wrongful foreclosure on the grounds that assignments of the deed of trust had been improperly backdated, and

thus the wrong party had initiated the foreclosure process." *Gomes*, 192 Cal.App.4th at 1155, 121 Cal. Rptr.3d 819. *Ohlendorf* notes that a plaintiff has a viable claim for wrongful foreclosure if it is alleged that defendants "are not the proper parties to foreclose." *Ohlendorf*, 279 F.R.D. at 582-83, 2010 WL 8533800, at *8. "Plaintiff does not dispute that her Loan would have been legitimately securitized into the Citigroup Trust had Defendants followed the terms of the PSA and New York trust law." (Opp'n at 9:23-26.) Plaintiff alleges that "the attempted securitization failed because of multiple violations of [Citigroup Trust's Pooling and Servicing Agreement or "PSA"] and New York Trust law." (*Id.* at 10:1-3.) Defendants' arguments are not directly on point to the allegations in the FAC. The FAC alleges a fairly unique set of facts here sufficient to state a claim for declaratory judgment. The Court denies Defendants' Motion as to this argument. Furthermore, because the Complaint alleges that the alleged debt was in default when assigned, the complaint cannot fail as the counter-claim defendant would be considered a debt collector in that circumstance. *Wise v. Wells Fargo Bank, NA*, 850 F. Supp. 2d 1047 (Cent. Dist. California 2012). The line of cases cited by the Plaintiff/Counterclaim Defendant BONY are inapplicable to these circumstances where they know that the debt they are attempting to collect is based on forged documents and incorrect amounts.

VI. THE MORTGAGE WAS SEPARATED FROM THE NOTE, VOIDING THE MORTGAGE.

The official records recorded in this County reflect that Document Numbers 2014193818 and 2014193828,

Corporate Assignments of Mortgage are both assignments by Nationstar Mortgage of JUST the mortgage, and as a result of this assignment: The mortgage has been separated from the note, making the mortgage a nullity (That the Document Number 2014193828, Corporate Assignment of Mortgage ONLY assigns the Mortgage, and not the note, and the note and mortgage were separated, and as a result the mortgage is VOID because the mortgage was separated from the note and pursuant to *Carpenter v. Longan*, 83 U.S. 271 (1872) the mortgage becomes a nullity. Because the assignments voided the mortgage, the underlying foreclosure action was a fraud upon the court and a nullity.

The assignments mentioned above were robo-signed by employees who had no actual pre-recorded authority to do so.

That the mortgage which was voided by the assignments were assigned into a closed trust. According to the date of the assignments, the mortgage (sans note) was assigned to BONY AS TRUSTEE on June 12th, 2014. The trust which was the purported beneficiary or recipient of the subject void mortgage was closed on December 31st, 2007. https://www.sec.gov/Archives/edgar/containers/fix290/1396007/000105640408000919/arm07002_35-3.txt

VII. THE MORTGAGE HAS BEEN SECURITIZED INTO A CLOSED TRUST AND IT IS THEREFORE VOID AND UNENFORCEABLE MAKING THE FORECLOSURE MORTGAGE VOID.

In this instance, it is therefore a violation of New York Law to acquire an asset into a closed trust, and in so doing, the transfer is void. That as a part of that

transaction, the assignment is of a securitized instrument and as a result of it being securitized into a closed trust, the instrument was actually void and makes the mortgage which is the subject of this action void, *See Glaski v. Bank of America*, 218 Cal. App. 4th 1079: "Under New York Trust Law, every sale, conveyance or other act of the trustee in contravention of the trust is void. EPTL § 7-2.4. Therefore, the acceptance of the note and mortgage by the trustee after the date the trust closed, would be void." (*Wells Fargo Bank, N.A. v. Erobobo*, 39 Misc. 3d 1220, 2013 N.Y. Slip Op. 50675, 972 N.Y.S.2d 147 (N.Y. Sup. Ct. 2013) p.*8; *see Levitin & Twomey, Mortgage Servicing*, 28 YALE J. ON REG., p. 14, fn. 35 [under N.Y. law, any transfer to the trust in contravention of the trust documents is void].) Relying on Erobobo, a bankruptcy court recently concluded "that under New York law, assignment of the Saldivars' Note after the start up day is void ab initio. As such, none of the Saldivars' claims will be dismissed for lack of standing." (*In re Saldivar* (Bankr. S.D.Tex., June 5, 2013, No. 11-10689) 2013 WL 2452699, p. *4.)

Defendant has standing to challenge the assignment and the validity of the underlying mortgage which was separated from the note when securitized as a result of the fact that the "Lender" has been involved in litigation with the servicer and others seeking damages. Said suits include, and are listed in the public SEC filings by the Plaintiff. http://archive.fast-edgar.com//20190401/A822U22CZZ2RF2ZA22ZD2MXST43SYZ22Z2BQ/

VII. THE MORTGAGE WAS SATISFIED WHEN THE LENDER SUED THE TRUST, THE TRUSTEE, THE BROKERS AND INDIVIDUALS WHO PUT THEM INTO THE TRUST, AND THUS THE JUDGMENT IS VOID DUE TO CONCEALMENT AND FRAUD AND SATISFACTION.

The Trust, Trustee, brokers and servicers all sued each other before closing the trust. The servicer was charged with overcharging borrowers for services that were rendered; overcharging for services that weren't and for negligence in handling the borrowers accounts. The trustee was charged with breach of fiduciary duties. All resulted in the mortgages being satisfied. *FHLB v Redwood Trust*, Washington Case No. 09-2-46348-4 SEA against the depositor, Redwood Trust, Inc. ("Redwood Trust"); *Schwab v. BNP Paribas Securities*, No. CGC-10-501610 (Cal. Sup. Ct.)

IX. THE COURT DOES NOT HAVE JURISDICTION AS THE PLAINTIFF LACKS CAPACITY TO SUE.

With regard to the judgment and attorney's fees sought, the Plaintiffs' claims are barred in whole or in part because of it's failure to plead its capacity to sue. We "review[] questions of law, including ... capacity to sue under [FRCP] 17(b), without deference." *Paradise Creations, Inc. v. UV Sales, Inc.*, 315 F.3d 1304, 1307 (Fed. Cir. 2003) (citation omitted); *see Johns v. Cty. of San Diego*, 114 F.3d 874, 877 (9th Cir. 1997) reviewing a district court's decision as to "[a]n individual's capacity to sue" *de novo*). "Capacity to sue in federal district court is governed by [FRCP] 17(b)." *See S. Cal. Darts Ass'n v. Zaffina*, 762 F.3d 921, 926 (9th Cir. 2014).

The name of the Plaintiff, The BONY AS TRUSTEE of the instant suit is shown in the caption of its Complaint and in the very first paragraph but nowhere in the body of the complaint does the Plaintiff set off or describe in any way the structure of the named entity. How did it become FKA? When? Where? Who did it? This entire complaint is a Sham and the court has been victim of a pattern of fraud perpetrated by a Ghost that does not exist, nor did it ever exist. The Plaintiff cannot prove the BONY AS TRUSTEE ever validly existed, and was the holder of an original note and mortgage, and the counterclaim sought to prove all of that. Nothing in the pleadings filed by the GHOST PLAINTIFF ever proved existence. Nor is any description provided to explain the legal nature of the entity and how such entity is the real party in interest with standing to pursue this foreclosure action on a promissory note which is required by the California Statutes or the Federal Law. The Defendant has been deprived of her Constitutional Rights, US and California, to Due Process and Equal Protection.

As a threshold matter, it is unclear exactly who the Plaintiff in this case is because the Complaint does not properly set off or identify exactly who the Plaintiff is within the body of the Complaint. A Plaintiff name is identified in the caption, but nowhere else in any of Plaintiff's pleadings is that Plaintiff's entity status or capacity even pled. The Plaintiff's failure to properly identify itself and thus plead its capacity (*e.g.*, "XYZ, Incorporated is a Delaware registered corporation properly registered as a foreign corporation with the California Secretary of State") prohibits the Plaintiff from asserting that it has established its capacity and it prevents the Defendants from properly

asserting defenses to this action which prevents this Plaintiff from maintaining this instant suit from the outset.

Further support for the requirement that every Plaintiff must plead its capacity to sue, its authority to sue and the legal existence of an organization is found in the author's comments to the Rules (2004 Version) which state:

> "Nevertheless if a party involved in a suit in other than his individual capacity, the capacity in which he is a party should be indicated in the caption and the pleadings."

"Capacity to sue" is an absence of legal disability which would deprive a party of the right to come into court. 59 AM. JUR. 2D Parties § 31 (1971). This is in contrast to "standing" which requires an entity have sufficient interest in the outcome of litigation to warrant the court's consideration of its position. *Keehn v. Joseph C. Mackey and Co.*, 420 So.2d 398 (Fla. 4th DCA 1982).

Capacity to sue is an attribute a claimant must possess before it can initiate a legal action and open the courthouse doors to have it's suit decided. The Plaintiff in this case, is not entitled to invoke the jurisdiction of the Court because Plaintiff has not pled its capacity to sue nor (since it is not a human) the ultimate facts of its legal existence as required by state law. They never registered the Trust to do business, and it does not exist. *See Coast v. Hunt Oil Co.*, 96 F. Supp. 53 (W.D. La. 1951) Defendants specifically aver that Plaintiff lacks the capacity to sue and, therefore, cannot maintain this action and the action should be dismissed.

Plaintiff simply states a name in the style of the case but fails to identify the state or country of origin or whether it is authorized to do business in the State of Florida (or is somehow exempt therefrom). BONY AS TRUSTEE, is, in fact, a fictitious name and has no direct or indirect connection to the alleged debt, the instant Note or Mortgage.

Pursuant to the foregoing and State and Federal Law and State and Federal Constitutions, the motion for fees should be denied.

X. THE PLAINTIFF LACKS CAPACITY TO SUE AND THEREFORE LACKS CAPACITY TO BE AWARDED ATTORNEY FEES.

Plaintiff in this action, BONY AS TRUSTEE, is not licensed to do business in California and is not registered in California in violation of the California Fraudulent Transfer Act and The Registration of Trust Act. Any alleged transfer of real estate to this plaintiff conveys no right to them and is invalid. Based on information provided by the California Department of State Division of Corporations Plaintiff does not have a certificate of authority to transact business in California and therefore may not maintain any court proceedings.

Plaintiff has failed to comply with Cal. Corp. §§ 2100-2117.1., Cal. Probate Code § 2106, and Cal. Corp Code § 2105, *supra*. Plaintiff is doing business in this state as a debt collector. They are doing business in this state buying and selling real estate. They are not registered and do not exist lawfully. Plaintiff also fails to state in any part of it's pleadings, that it is authorized to do business in the State of California or is somehow exempt therefrom. Plaintiff is not listed

as a business name with the California Department of State Division of Corporations according to their website.

Pursuant to the foregoing and the California Statutes, the motion for fees denied, the judgment vacated and the Complaint must be dismissed. Rule 17(b) of FRCP states in pertinent part: "[t]he capacity of a corporation to sue or be sued shall be determined by the law under which it was organized." AMESCO is a California corporation. A suspended corporation cannot prosecute or defend an action in a California court. *Ransome-Crummey Co. v. Sup.Ct.*, 188 Cal. 393, 205 P. 446 (1922); *Alhambra-Shumway Mines, Inc. v. Alhambra Gold Mine Corp.*, 155 Cal.App.2d 46, 317 P.2d 649 (1957). A corporation's incapacity to sue or defend in state court also precludes it from suing or defending in federal court. *Matter of Christian & Porter Aluminum Co.*, 584 F.2d 326 (9th Cir. 1978). Rule 41(b) of the FRCP provides that it is proper to dismiss an action for failure to comply with the FRCP. As AMESCO has failed to comply with Fed. R. Civ. P. 17(b), its claims on the written and oral contracts is dismissed. *AMESCO Exports, Inc. v. Associated Aircraft Mfg. & Sales, Inc.*, 977 F. Supp. 1014 (C.D. Cal. 1997).

XI. PLAINTIFF CANNOT PROVIDE ANY WRITTEN AUTHENTIC AGREEMENT FOR PAYMENT OF FEES; CANNOT PRODUCE PROOF FEES WERE EVER PAID AND CANNOT PROVIDE PROOF THAT THEY ARE OWED BY THE DEFENDANT.

Plaintiff claims it is a trustee and acting for the benefit of the trust, and therefore a debt collector since it is not the owner of the purported obligation but attempting to collect the debt for a trust which was closed at the time of the purported acquisition, doing

business here unlawfully, and in violation of New York and Delaware law. This case is a challenge to the principal's authority to foreclose rather than to whether an agent had the authorization of its principal to initiate foreclosure. The *Gomes* court specifically distinguished itself from *Ohlendorf*, 279 F.R.D. 575 in which "the plaintiff alleged wrongful foreclosure on the grounds that assignments of the deed of trust had been improperly backdated, and thus the wrong party had initiated the foreclosure process." *Gomes v. Countrywide Home Loans*, 192 Cal.App.4th 1149, 1155 (2011). *Ohlendorf* notes that a plaintiff has a viable claim for wrongful foreclosure if it is alleged that defendants "are not the proper parties to foreclose." *Ohlendorf*, 279 F.R.D. at 582-83, 2010 WL 8533800, at *8. "Plaintiff does not dispute that her Loan would have been legitimately securitized into the Citigroup Trust had Defendants followed the terms of the PSA and New York trust law." (Opp'n at 9:23-26.) Plaintiff alleges that "the attempted securitization failed because of multiple violations of [Citigroup Trust's Pooling and Servicing Agreement or "PSA"] and New York Trust law." (*Id.* at 10:1-3.) Defendants' arguments are not directly on point to the allegations in the FAC. The FAC alleges a fairly unique set of facts here sufficient to state a claim for declaratory judgment. The Court denies Defendants' Motion as to this argument.

Because the complaint alleges that the alleged debt was in default when purportedly acquired, the complaint cannot fail as BONY then qualifies as a debt collector under these circumstances. *See Wise v. Wells Fargo Bank, NA*, 850 F. Supp. 2d 1047.

There is no original signed agreement by the Defendant for fees. Plaintiff cannot provide any written authentic agreement for payment of fees; cannot produce proof fees were ever paid and cannot provide proof that they are owed by the defendant. Defendant served discovery asking for all the documents and they could not or refused to provide a single document in support of their claim for fees. They would not provide proof the fees were incurred; would not provide proof the Defendant agreed to pay them; would not provide proof that they exist; would not provide a retainer and would not provide proof the ghost ever paid the fees sought.

XII. THE REFUSAL OF THE PLAINTIFF/APPELLEE TO PROVIDE ANY PROOF OF EXISTENCE, PROOF THAT FEES WERE OWED, PROOF THAT FEES WERE INCURRED, PROOF OF RETAINER AGREEMENT, PROOF OF BIRTH CERTIFICATE, AND PROOF THAT THE COMPLAINT BROUGHT BY THE PLAINTIFF AGAINST THE NAMED DEFENDANTS IS NOT TIME BARRED PURSUANT TO CCP 336A, SINCE THEY HAVE NO DOCUMENTS TO SUPPORT ANY OF THEIR CLAIMS, THEY ARE NOT ENTITLED TO PROTECTION UNDER CIVIL CODE SECTION 882.020(A)(2) AS ALL THEIR DOCUMENTS ARE VOID FORGERIES.

Plaintiff is guilty of far more than just the causes of action already brought, but also knowingly suborning perjury and tendering a known forgery to the court and making false representations to the court. Remember, Defendant has already settled with Bank of America. Defendant knows things about the case that she has yet to prove. When the Plaintiff claims they purchased the bundle of loans, they were provided with a

list of defects for each of the loans they purchased. The known defects included in this case in conjunction with the fact that they do not have the original documents and that the documents they received are forgeries all prove that they are liable for attempting to bring an untimely action. BONY, during the discovery process that this document must and will be produced. BONY can short cut this entire matter by admitting your clients knew of the defects when they assigned the case to you for civil litigation and disclosed that information to BONY. That BONY already possesses the smoking guns in this case and knows precisely what is wrong with the documents. BONY is the trustee of a known closed trust, that cannot acquire the note and mortgage and is operating *ultra vires* and in violation of both New York and Delaware law.

XIII. THE MOTION FOR FEES IS *ULTRA VIRES* UNDER LAWS OF NEW YORK.

Plaintiff the BONY AS TRUSTEE is the Trustee of a closed trust whose own trust documents violate New York Law. New York Law is applicable to the trust as set forth in the trust documents. The trust was closed before the purported acquisition of the forged documents by BONY's trust. The complaint, taken as true, especially in light of the Bank of America already settling with the Defendant/Counterclaimant, clearly states sufficient facts to support a cause of action for unfair competition and unfair trade practices. They are attempting to use forged documents, recorded false documents in the official records, committed felonies by forged signatures, by executing documents without authority to do so, by misrepresenting the authority to execute documents, all for the purpose of

stealing the Counterclaimants property and to cause her to suffer severe emotional distress or, to extort money from her that she did not owe. They are not legally in existence and they are not entitled to enforce a void mortgage or collect fees.

XIV. THE FEES SOUGHT ARE OUTRAGEOUS, OVERCHARGED FOR SERVICES NOT PERFORMED AND EXCESSIVE BARRING THEM FROM THE RIGHT TO COLLECT ANY FEES.

Plaintiffs overreach in claiming over $77,777.50 in fees and expenses for this case which terminated at such an unreasonably early juncture is outrageous and the entire motion must be denied. There is no proof of any retainer; no proof that any of those fees were paid by the purported ghost client; no proof of a signed written agreement by the Defendant. There is no existence of any agreement or reasonable fees incurred. The court must find that "a near 'but for' relationship must exist between the Rule 37 violation and the activity for which fees and expenses are awarded." *Cobell v. Babbitt*, 188 F.R.D. 122, 127 (D.D.C. 1999) (citing *Westmoreland v. CBS, Inc.*, 770 F.2d 1168, 1179 (D.C. Cir. 1985) (requiring fees and expenses awarded to be "incurred because of' the violation); citing *Turnbull v. Wilcken*, 893 F.2d 256, 258 (10th Cir. 1990)). Plaintiff sought to have a deed of trust removed which the Defendant did not record, and therefore an award of fees would be unreasonable and not caused by the Defendant. The Court gave no legitimate reason for granting the Plaintiffs relief and did not justify denial of the Defendants relief. The court did not prove the Plaintiff even existed nor find that it existed in its final judgment.

The court must apply exacting standards that are to be applied in reviewing fee applications: "The Circuit has admonished...that 'where a fee is sought from the United States, which has infinite ability to pay, the court must scrutinize the claim with particular care.'" *Cobell v. Babbitt*, 188 F.R.D. at 125 (quoting *Copeland v. Marshall*, 641 F.2d 880, 888 (D.C. Cir. 1980)).

XV. BECAUSE PLAINTIFFS IMPROPERLY CLAIM FEES AND EXPENSES ON WORK FOR WHICH THEY HAVE NOT BEEN AWARDED RECOVERY, THEIR ENTIRE CLAIM SHOULD BE DISALLOWED.

A. Settled Precedent Permits Disallowance of Entire Fee.

Plaintiffs' Statement presents one of the admittedly unusual instances in which a fee application is so outlandish in its request that it should be denied entirely. In *Environmental Defense Fund v. Reilly*, 1 F.3d 1254, 1258 (D.C. Cir. 1993), the court stated the following with regard to fee applications:

> We may deny in its entirety a request for an "outrageously unreasonable" amount, lest claimants feel free to make "unreasonable demands, knowing that the only unfavorable consequence of such misconduct would be reduction of their fee to what they should have asked for in the first place." (quoting *Brown v. Stackler*, 612 F.2d 1057, 1059 (7th Cir. 1980), and citing *Jordan v. Dep't of Justice*, 691 F.2d 514, 518 (D.C. Cir. 1982); *Trichilo v. Sec'y of Health and Human Services*, 823 F.2d 702, 708 (2d Cir. 1987)). In *Environmental Defense Fund v. Reilly*. the

court disallowed the entire fee claimed by one of the attorneys for the applicant (but not the others), because of an excessive amount of time claimed on certain tasks. 1 F.3d at 1258. The court also noted that, as an alternative to disallowance of the entire fee request, a court may "impose a lesser sanction, such as awarding a fee below what a 'reasonable' fee would have been in order to discourage fee petitioners from submitting an excessive request." *Id.* Plaintiffs' Statement fits within the "outrageously unreasonable" standard described in *Environmental Defense Fund v. Reilly*. Even putting aside the fact that the overall amount claimed by Plaintiffs (293.50 hours, with fees and expenses totaling $77,777.50) is grossly excessive in light of the matters at issue, Plaintiffs' Statement is outrageously unreasonable because Plaintiffs have claimed substantial amounts for four motions, and they did not even answer the discovery propounded. They are not entitled to the grossly overcharged fees. There is no itemized fees and they refused to provide the same. There is no retainer agreement, they refused to provide the same. There is no agreement requiring the Defendant to pay the fees. They refused to provide them. Discovery was propounded demanding all this information, and they did not even answer that discovery. Plaintiffs had no basis to believe, and could not reasonably have believed, that they were entitled to include that work in their present application. Their conduct is aggravated by the fact

that they have tried this before.' There are other cases which show that they could not produce their Birth Certificate, as they refused to here as well. This is consistent with settled precedent that fee awards should include compensation only for "the number of hours reasonably expended on the litigation." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983); *Environmental Defense Fund v. Reilly*, 1 F.3d at 1258. Thus, "hours that are excessive, redundant, or otherwise unnecessary" are not compensable time in a fee application. *Board of Trustees v. JJ&R*, 136 F.3d at 800. When applicants claim excessive amounts of time to perform their tasks, the courts readily reduce the allowed hours. *See Michigan v. Environmental Protection Agency* 254 F.3d 1087, 1093 (D.C. Cir. 2001) (20 hours for reply brief was reasonable; but court reduced by 50% a claim for 90 hours for an opening brief); *In re Mullins*, 84 F.3d 459, 467 (D.C. Cir. 1996)(court reduced by 50% a claim for 130 hours to prepare a reply brief on a motion to quash, finding 65 hours would have been reasonable); *American Petroleum Inst. v. EPA*, 72 F.3d 907, 917 (D.C. Cir. 1996)(court reduced by 50% a claim for 120 hours on a reply brief, finding 60 hours reasonable); *MasomyMasters, Inc. v. Barr*, No. 86-201, 1992 WL 13208, at *4 (D.D.C. Jan. 9, 1992) (court reduced by over 70% a claim for 68.1 hours on a reply brief); *see also Salazar v. District of Columbia*, 123 F. Supp. 2d 8, 16 (D.D.C. 2000) (court reduced by 50% a claim for 44 hours on a legal memorandum);

> *Martini v. Federal Nat'l Mortgage Ass'n.*, 977 F. Supp. 482, 489 (D.D.C. 1997) (court reduced by 50% a claim for 58.67 hours to prepare a pretrial statement); *Donovan v. Local 6, Washington Teachers Union*, 665 F. Supp. 1, 4 (D.D.C. 1986) (court reduced by 50% a claim for 44.9 hours on a fee application, finding 20 hours would be reasonable).

These cases do not indicate that excessive hours always are to be reduced by a fixed percentage. Rather, the courts apply their own judgment as to how much time was appropriate for the work product that resulted. *See American Petroleum Institute*, 72 F.3d at 917 ("[b]ased on our review of the reply brief, we conclude that it would have been reasonable for an experienced partner to have spent 60 hours" preparing it); *Masomy Masters, Inc. v. Nelson*, 1992 WL 13208 at *4 (USDC D.C. 1997) (court relied upon its prior experience and knowledge of the legal marketplace to determine how many hours were appropriate).

XVI. THE COURT SHOULD DENY THE FEES FOR FAILING TO MEET AND CONFER IN GOOD FAITH.

The email chain between the Defendant and Plaintiffs counsel speaks volumes about the concealment and fraud perpetrated by the Plaintiff, and further is proof that the Plaintiff does not exist and they refuse to provide proof of Birth Certificate, existence, payment of fees, retainer agreement, signed mortgage agreement, signed note, or any proof of payment by a Ghost Client. As a result, the Defendant is entitled to have the court vacate the judgment and let this case proceed. The court, even in the most prejudicial light in favor of a non-existent ghost plaintiff, will see that the motion is made without proper meet and confer,

and the Plaintiff refused to provide any proof whatsoever establishing existence, right to recover fees, agreement or any other basis entitling them to an award. They said they would not produce anything. Since they refused, they should not be entitled to recover a penny. Additionally, it is significant to note that the fees request are not supported by any declaration from the ghost client. Where is the request from the "client" asking to be reimbursed for fees? If a client paid out $77,000, wouldn't they want to sign an affidavit or provide a copy of a cancelled check to be sure they could get those paid back? A real client would, a ghost has no employee to sign such a document. They refused to provide any proof and therefore did not meet and confer in good faith. If a Plaintiff simply sends an email or wants to discuss the matter by phone, and then refuses to provide anything the Defendant asked for, then the meeting was not made in good faith. The motion is a sham, the plaintiff does not exist and the court should vacate the judgment.

CONCLUSION

There is no trust. There is no entity with legal capacity to foreclose. There is no agreement for fees. There is no Plaintiff. There is no party Plaintiff entitled to any relief. That Plaintiff has been paid in full trifold. The Plaintiff is not entitled to the relief sought, and the court must vacate the judgment.

Respectfully submitted,

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