

No. _____

**In the
Supreme Court of the United States**

John B. Freitas

Petitioner

v.

Bank of America,

Respondent

On Petition for a Writ of Certiorari
to the
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
Case #19-17394

PETITIONER'S APPENDIX

On Appeal from the United States District Court
for the Northern District of California
William Alsup, District Judge, Presiding
Case # D.C. No. 3:19-cv-03347-WHA

APPENDIX

Case #19-17394

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

John B. Freitas
Plaintiff-Appellant,

v.

Bank of America,
Defendant- Appellee

APPENDIX A

"MEMORANDUM" NINTH CIRCUIT OPINION

On Appeal from the United States District Court
for the Northern District of California
William Alsup, District Judge, Presiding
Case # D.C. No. 3:19-cv-03347-WHA

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAR 22 2021

FOR THE NINTH CIRCUIT

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

JOHN B. FREITAS,

Plaintiff-Appellant,

v.

BANK OF AMERICA,

Defendant-Appellee.

No. 19-17394

D.C. No. 3:19-cv-03347-WHA

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
William Alsup, District Judge, Presiding

Submitted March 16, 2021**

Before: GRABER, R. NELSON, and HUNSAKER, Circuit Judges.

John B. Freitas appeals pro se from the district court's order dismissing his action alleging federal and state law claims arising out of foreclosure proceedings.

We have jurisdiction under 28 U.S.C. § 1291. We review de novo a district court's dismissal based on claim preclusion. *Stewart v. U.S. Bancorp*, 297 F.3d 953, 956

* 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).

(9th Cir. 2002). We affirm.

The district court properly dismissed Freitas's action as barred by the doctrine of claim preclusion because Freitas had already litigated the validity of the operative deed of trust in prior state court actions, which involved the same parties, and resulted in final judgments on the merits. *See DKN Holdings LLC v. Faerber*, 352 P.3d 378, 386 (Cal. 2015) (elements of claim preclusion under California law).

Although Freitas argues that the present action involves a different cause of action because at the time the trustee's sale was conducted there were two competing trustees under two deeds of trust securing the same obligation, the trustee's sale was conducted by the properly substituted trustee under the operative deed of trust, as had been determined in the prior state court actions. *See Boeken v. Philip Morris USA, Inc.*, 240 P.3d 342, 348 (Cal. 2010) ("[A] judgment for [a] defendant is a bar to a subsequent action by the plaintiff based on the same injury to the same right, even though he presents a different legal ground for relief." (quotation marks omitted; emphasis in original)); *cf. Dimock v. Emerald Props. LLC*, 97 Cal. Rptr. 2d 255 (Ct. App. 2000) (the recording of the substitution of trustee under California Civil Code § 2934a gave the second trustee the exclusive power to conduct a trustee's sale rendering the sale conducted by the first trustee void).

We do not consider matters not specifically and distinctly raised and argued in the opening brief, or arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

AFFIRMED.

19-17394

John B. Freitas
36937 Cherry St.
Newark, CA 94560

RECEIVED - MARCH 24, 2021

APPENDIX

Case #19-17394

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

John B. Freitas

Plaintiff-Appellant,

v.

Bank of America,

Defendant- Appellee

APPENDIX B

DISTRICT COURT OPINION

On Appeal from the United States District Court
for the Northern District of California
William Alsup, District Judge, Presiding
Case # D.C. No. 3:19-cv-03347-WHA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOHN FREITAS,
Plaintiff,

No. C 19-03347 WHA

v.

BANK OF AMERICA N.A. and DOES
1-60,
Defendants.

**ORDER RE MOTION TO DISMISS
AND REQUEST FOR JUDICIAL
NOTICE**

INTRODUCTION

In this foreclosure case, defendants move to dismiss. For the following reasons, the motion is **GRANTED**.

STATEMENT

In 2004, *pro se* plaintiff, John Freitas obtained a loan for \$333,700 from Countrywide Bank N.A. secured by a deed of trust and assignment of rents on real property located in Newark. On October 5, 2005, he obtained another loan for \$349,840 from Countrywide secured by a deed of trust and assignment of rents on the same property. A second version of the same document was recorded on October 25, 2005. The only difference between the two documents was that the first document contained a signature line for plaintiff's wife, which he initialed, whereas the later deed did not. In 2011, plaintiff defaulted on his loans and defendant Bank of

1 America, N.A. recorded a notice of default in April 2014. Bank of America is a successor in
2 interest of Countrywide. In 2016, the October 5 deed of trust was reconveyed to plaintiff.

3 Meanwhile, in February 2016, plaintiff filed an action in Alameda County Superior
4 Court alleging fraud and cancellation and rescission of written instruments stating that his
5 October 25 deed of trust had been reconveyed, but that Bank of America had still threatened to
6 foreclose on the property. A 2016 order sustained the demurrer to the complaint and the state
7 court entered judgment in Bank of America's favor. Plaintiff unsuccessfully appealed to the
8 California Court of Appeal and then the California Supreme Court. Judgment became final in
9 August 2017 when the California Court of Appeal issued a remittitur. *Freitas v. Bank of*
10 *America, N.A., et al.*, Case No. RG15792569 (*Freitas I*).

11 In January 2018, plaintiff filed another action in Alameda County Superior Court
12 alleging the following claims as to his October 25 deed of trust and corresponding loan: (1)
13 "preliminary and permanent injunction," (2) quiet title, (3) slander of title, (4) conspiracy to
14 slander title, (5) violation of Section 2923.5 of the California Civil Code, and (6) violation of
15 Section 17200 of the California Business and Professions Code. *Freitas v. Bank of America,*
16 *N.A., et al.*, Case No. RG17877297 (*Freitas II*). A May 2018 order sustained Bank of
17 America's demurrer without leave to amend. In August 2018, the state court dismissed the
18 action with prejudice and entered judgment against plaintiff.

19 Plaintiff then commenced an action in July 2018 in the United States District Court for
20 the Northern District of California naming twelve defendants, including Bank of America, N.A.
21 alleging the following claims as to his 2004 deed of trust and corresponding loan: (1) unfair and
22 deceptive consumer practices with respect to loan servicing, foreclosure processing, and loan
23 origination; (2) violation of the Financial Institutions Reform, Recovery and Enforcement Act
24 of 1989; (3) declaratory judgment; (4) bankruptcy misconduct; (5) quiet title; (6) slander of
25 title; (7) conspiracy to slander title; (8) violation of Section 2923.5 of the California Civil Code;
26 and (9) violation of Section 17200 of the California Business and Professions Code. Also in
27 July 2018, plaintiff filed an application for a temporary restraining order to halt the foreclosure
28 of his residence. A July 2018 order denied the temporary restraining order on the ground

1 plaintiff did not raise serious questions going to the merits. A September 2018 order ultimately
 2 dismissed the case for failure to prosecute (Case No. 18-cv-03993, Dkt. Nos. 1, 2, 21,
 3 30)(*Freitas III*).

4 Following the foreclosure sale of the underlying property, plaintiff commenced the
 5 instant action in June 2019 against Bank of America alleging, as to his October 25 deed of trust
 6 and corresponding loan, the same claims as *Freitas III* as well as other miscellaneous non-legal
 7 claims such as “the deed of trust on which defendant B of A has foreclosed is void” and “the
 8 debt, if there ever were a debt, has been satisfied.” He then filed a motion for a temporary
 9 restraining order on the same day. The undersigned related the instant action to this Court the
 10 next day. A June 17 order denied plaintiff’s motion for a temporary restraining order on the
 11 grounds that he raised essentially the same arguments as he did in *Freitas III* and that he was
 12 unlikely to suffer irreparable harm as the foreclosure had already occurred (Dkt. Nos. 1, 2, 10,
 13 14). Bank of America now moves to dismiss the entire complaint. Plaintiff opposes. This
 14 order follows full briefing and oral argument.

15 ANALYSIS

16 A complaint must plead “enough facts to state a claim to relief that is plausible on its
 17 face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim has facial plausibility
 18 when its factual allegations, rather than mere conclusory statements, create the reasonable
 19 inference that the defendant is liable for the misconduct alleged. *Ashcroft v. Iqbal*, 556 U.S.
 20 662, 678 (2009). In ruling on a motion to dismiss, we must accept factual allegations in the
 21 complaint as true and construe the pleadings in the light most favorable to the nonmoving party.
 22 *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1030–31 (9th Cir. 2008).
 23 Conclusory allegations or “formulaic recitation of the elements” of a claim, however, are not
 24 entitled to the presumption of truth. *Iqbal*, 556 U.S. at 681.

25 1. RES JUDICATA.

26 Res judicata prohibits successive litigation of claims that have already been litigated as
 27 well as those that could have been litigated based on the same operative facts. 21A Fed. Proc.,
 28 L. Ed. § 51:227. The doctrine of res judicata is applicable when there is (1) privity between

1 parties, (2) an identity of claims, and (3) a final judgment on the merits. *Owens v. Kaiser*
 2 *Found. Health Plan, Inc.*, 244 F.3d 708, 713 (9th Cir.2001). As a general matter, under the Full
 3 Faith and Credit Act, federal courts must give state judicial proceedings “the same full faith and
 4 credit . . . as they have by law or usage in the courts of [the] State . . . from which they are
 5 taken.” 28 U.S.C. § 1738. Here, res judicata precludes plaintiff’s claims in the instant suit.

6 *First*, here, there is no question as to the privity of the parties as Bank of America has
 7 been a party to all of the aforementioned actions.

8 *Second*, plaintiff makes essentially the same underlying allegations as he did in all of his
 9 preceding lawsuits. Plaintiff contends this action addresses different actions and claims. He
 10 has not, however, added new or different facts than those that he made in any of the previous
 11 proceedings. Specifically plaintiff’s underlying argument throughout has been that his October
 12 25 deed of trust was forged and that the reconveyance of the October 5 deed of trust relieved
 13 him of any duty to make payments and accordingly made the foreclosure proceedings unlawful.
 14 Although plaintiff makes additional claims under federal law here, he is merely rephrasing the
 15 same general grievances.

16 *Third*, final judgments on the merits have occurred. In California, a state court’s order
 17 sustaining a general demurrer constitutes a final judgment on the merits. *See McKinney v. Cnty.*
 18 *of Santa Clara*, 110 Cal.App.3d 787, 794 (1980) (holding “[a] judgment on a general demurrer
 19 will have a preclusive effect on a new action in which the complaint states the same facts which
 20 were held not to constitute a cause of action on the former demurrer”). In both *Freitas I* and
 21 *Freitas II*, the state court sustained Bank of America’s demurrer without leave to amend.
 22 Plaintiff argues that various mistakes were made in these state court proceedings, but that does
 23 not change the fact that final judgments on the merits have occurred. Any mistakes by the state
 24 court judge were subject to correction by way of appeal via the state appellate court.

25 2. REQUEST FOR JUDICIAL NOTICE.

26 Federal Rule of Evidence 201(b) permits courts to take judicial notice of any fact “that is
 27 not subject to reasonable dispute because it . . . can be accurately and readily determined from
 28 sources whose accuracy cannot reasonably be questioned.” While a court may take judicial

1 notice of matters of public record at the motion to dismiss stage, it cannot take judicial notice of
2 disputed facts in the public record. *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 999
3 (9th Cir. 2018).

4 Bank of America requests judicial notice of the following documents: (1) the first
5 amended complaint in *Freitas I*, (2) An April 2016 order sustaining the demurrer in *Freitas I*,
6 (3) the entry of judgment in *Freitas I*, (4) the notice of appeal in *Freitas I*, (5) the California
7 Court of Appeal's May 2017 opinion in *Freitas v. Bank of America, N.A.*, No A148140, (6) the
8 California Supreme Court's August 2017 order denying plaintiff's petition for review, (7) the
9 California Court of Appeal's remittitur issued August 2017, (8) the first amended complaint in
10 *Freitas II*, (9) the June 2018 notice of entry of order in *Freitas II*, and (10) the notice of entry
11 fo judgment in *Freitas II*. Plaintiff disputes the truthfulness of these documents, but they are
12 nonetheless appropriate subjects of judicial notice. Defendant's request is accordingly
13 **GRANTED**.


14 Plaintiff requests judicial notice of the following documents: (1) the California Court of
15 Appeal's May 2017 opinion in *Freitas v. Bank of America, N.A.*, No A148140; (2) the deed of
16 trust and assignment of rents recorded October 12, 2005, (3) the substitution of trustee and
17 reconveyance recorded July 1, 2016, (4) the deed of trust and assignment of rents recorded
18 October 25, 2005, (5) the substitution of trustee and reconveyance recorded November 10,
19 2005, (6) the notice of trustee's sale recorded March 7, 2019, (7) the substitution of trustee
20 recorded April 22, 2014, (8) the trustee's deed upon sale recorded June 11, 2019, (9) the deed of
21 reconveyance recorded April 8, 2004, (10) Schedule D of creditors holding secured claims, (11)
22 the bankruptcy court discharge of debtor and final decree dated October 14, 2015. The first
23 item is judicially noticed. It is unclear where Schedule D comes from and is thus a document
24 whose accuracy may reasonably be questioned. Judicial notice of Schedule D is thus **DENIED**.
25 The remaining items are appropriate for judicial notice and plaintiff's request is **GRANTED**.

CONCLUSION

The motion to dismiss is **GRANTED**. Any leave to amend would be futile. The case is **DISMISSED WITH PREJUDICE** and the Clerk shall **CLOSE** the file. Plaintiff should file any notice of appeal timely.

IT IS SO ORDERED.

Dated: November 11, 2019.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE

Service of Process:3:19-cv-03347-WHA Freitas v.Bank Of America CASE**CLOSED on 11/11/2019**

ADRMOP,CLOSED,ProSe

U.S. District Court

California Northern District

Notice of Electronic Filing

The following transaction was entered on 11/12/2019 at 11:17 AM PST and filed on 11/12/2019

Case Name: Freitas v. Bank Of America**Case Number:** 3:19-cv-03347-WHA**Filer:****WARNING: CASE CLOSED on 11/11/2019****Document Number:** 52(No document attached)**Docket Text:**

CERTIFICATE OF SERVICE re [51] Order on Motion to Disqualify Counsel, Order on Motion to Dismiss: The deputy clerk hereby certifies that on 11/12/2019, a copy of this order was served by sending it via first-class mail to the address of each non-CM/ECF user listed on the Notice of Electronic Filing. *This is a text only docket entry. There is no document associated with this entry.* (tlhS, COURT STAFF) (Filed on 11/12/2019)

3:19-cv-03347-WHA Notice has been electronically mailed to:

Joel C. Spann jcs@severson.com, mat@severson.com

3:19-cv-03347-WHA Please see Local Rule 5-5; Notice has NOT been electronically mailed to:

John B. Freitas
36937 Cherry Street
Newark, CA 94560

John B. Freitas
36937 Cherry Street
Newark, CA 94560

19-cv-03347-WHA

RECEIVED NOV. 15, 2019

APPENDIX

Case #19-17394

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

John B. Freitas
Plaintiff-Appellant,

v.

Bank of America,
Defendant- Appellee

APPENDIX C

COURT OF APPEAL OF THE STATE OF CALIFORNIA OPINION

On Appeal from the United States District Court
for the Northern District of California
William Alsup, District Judge, Presiding
Case # D.C. No. 3:19-cv-03347-WHA

Filed 5/30/17

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

JOHN B. FREITAS,

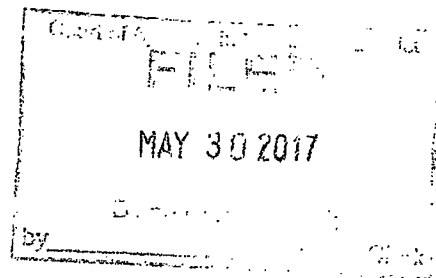
Plaintiff and Appellant,

v.

BANK OF AMERICA, N.A.,

Defendant and Respondent.

A148140

(Alameda County
Super. Ct. No. RG15792569)

John Freitas, proceeding in propria persona, attempts to challenge a judgment dismissing, with prejudice, his first amended complaint (FAC) against Bank of America, N.A. Freitas contends the trial court erred in sustaining Bank of America's demurrer without leave to amend. On the record before us, we must affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

The material facts in this appeal would normally be derived from the allegations of Freitas's FAC and matters we may judicially notice. (*Evans v. City of Berkeley* (2006) 38 Cal.4th 1, 6.) However, as discussed *post*, our ability to set forth those material facts is limited by the fact the record Freitas provides does not contain his complaint or FAC, Bank of America's demurrer to the FAC, Freitas's opposition, or the trial court's ruling on the demurrer. From the record before us, we can discern only that Bank of America demurred to Freitas's FAC and the trial court sustained the demurrer without leave to amend. On April 28, 2016, the trial court entered judgment against Freitas. The judgment states: "the [FAC] is dismissed with prejudice in its entirety as to all causes of

~~action. Freitas shall take nothing . . . from Bank of America.” Freitas filed a timely~~
notice of appeal.

II. DISCUSSION

Freitas contends the trial court erred in sustaining Bank of America’s demurrer to his FAC. “On appeal from an order of dismissal after an order sustaining a demurrer, the standard of review is de novo: we exercise our independent judgment about whether the complaint states a cause of action as a matter of law. [Citation.] First, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. Next, we treat the demurrer as admitting all material facts properly pleaded. Then we determine whether the complaint states facts sufficient to constitute a cause of action. [Citations.] [¶] We do not, however, assume the truth of contentions, deductions, or conclusions of law.” (*Stearn v. County of San Bernardino* (2009) 170 Cal.App.4th 434, 439–440.) We are “not bound by the trial court’s construction of the complaint.” (*Wilner v. Sunset Life Ins. Co.* (2000) 78 Cal.App.4th 952, 958.) Rather, we independently evaluate the complaint, construing it liberally. (*Ibid.*; *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

We begin by reiterating settled rules of appellate review, often unfamiliar to pro se litigants. “ ‘A judgment or order of the lower court is *presumed correct*. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown.. This is not only a general principle of appellate practice but an ingredient of the constitutional doctrine of reversible error.’ ” (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) The appellant has the burden of demonstrating error on the part of the trial court. (*People v. Giordano* (2007) 42 Cal.4th 644, 666 [“ ‘ “error must be affirmatively shown” ’ ”]; *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1140–1141.) In the procedural posture of the instant appeal, “[the appellant] has the burden to show either that the demurrer was sustained erroneously or that the court abused its discretion in sustaining the demurrer without leave to amend.” (*Pinnacle Holdings, Inc. v. Simon* (1995) 31 Cal.App.4th 1430, 1434.)

Bank of America contends that Freitas has failed to meet his burden to provide an appellate record showing error. We agree. “The party seeking to challenge an order on appeal has the burden to provide an adequate record to assess error. [Citation.] Where the party fails to furnish an adequate record of the challenged proceedings, his claim on appeal must be resolved against him.” (*Rancho Santa Fe Assn. v. Dolan-King* (2004) 115 Cal.App.4th 28, 46.) “ ‘In the absence of a contrary showing in the record, all presumptions in favor of the trial court’s action will be made by the appellate court.’ ” (*Foust v. San Jose Construction Co., Inc.* (2011) 198 Cal.App.4th 181, 187.) “ ‘A necessary corollary to this rule is that if the record is inadequate for meaningful review, the appellant defaults and the decision of the trial court should be affirmed.’ ” (*Gee v. American Realty & Construction, Inc.* (2002) 99 Cal.App.4th 1412, 1416.) Freitas is not exempt from these rules because he represents himself on appeal. (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246; *McComber v. Wells* (1999) 72 Cal.App.4th 512, 522–523.) “ ‘ “When a litigant is appearing in propria persona, he is entitled to the same, but no greater, consideration than other litigants and attorneys [citations]. Further, the in propria persona litigant is held to the same restrictive rules of procedure as an attorney.” ’ ” (*Burnete v. La Casa Dana Apartments* (2007) 148 Cal.App.4th 1262, 1267.)

Here, Freitas elected to proceed by way of a clerk’s transcript without any record of the oral proceedings.¹ With respect to the requested clerk’s transcript, on pages 2 and 3 of his notice designating record on appeal, Freitas failed to “identify each designated

¹ Freitas’s notice designating the record on appeal is ambiguous. Despite the form’s instructions to elect “the . . . method of providing the Court of Appeal with a record of the documents filed in the superior court (check a, b, c, d, or e . . .),” Freitas selected multiple methods—a (clerk’s transcript), b (appendix), and c (original superior court file). Only a clerk’s transcript was ever filed. This was not an error of the superior court clerk. Despite the requirement found in California Rules of Court, rule 8.128(a)(2), Freitas did not attach a stipulation to use the original superior court file to Freitas’s notice. Apparently, such a stipulation was never reached. Freitas also did not file an appendix with his opening brief. (See *id.*, rule 8.124(e)(2) [“an appellant’s appendix must be served and filed with the appellant’s opening brief”].)

document by its title and filing date.” (Cal. Rules of Court, rule 8.122(a)(1).) In addition to the required documents automatically included in every clerk’s transcript, Freitas designated only his “Reply In Support of Plaintiff’s Opposition to Defendant, Bank of America’s Demurrer to Plaintiff’s First Amended Complaint,” which was filed on April 4, 2016. Thus, our official record consists of the register of actions, Freitas’s sur reply, the notice of appeal, the notice designating record on appeal, the judgment, and the notice of entry of judgment.² As we have noted, the clerk’s transcript does *not* contain Bank of America’s demurrer or the trial court’s order sustaining Bank of America’s demurrer to the FAC. Accordingly, we do not know the basis for the trial court’s demurrer ruling. Most troubling, however, is that the clerk’s transcript does not include Freitas’s FAC. Thus, we simply have no way of independently determining if Freitas alleged facts stating a cause of action.

As Bank of America correctly points out, Freitas did not seek to augment the record in a timely manner after the clerk’s transcript was filed. (Cal. Rules of Court, rule 8.155(a)(1).) Instead, Freitas waited 76 days and only then sought to augment the clerk’s transcript to include his FAC, complaint, as well as the demurrer and opposition papers. By that time, both Freitas’s opening brief and the respondent’s brief had been filed,³ and he presented no excuse for the late filing other than his ignorance of the

² Freitas attaches to his opening brief what appear to be copies of two substitutions of trustee and a notice of default. While a party may attach as exhibits copies of “materials *in the appellate record*,” these documents do not appear in the record and we may not consider them. (See Cal Rules of Court, Rule 8.204(d), italics added.)

³ Freitas’s opening brief does not provide any citations to the record properly before us. The appellant “must present meaningful legal analysis supported by citations to authority and *citations to facts* in the record that support the claim of error.” (*In re S.C.* (2006) 138 Cal.App.4th 396, 408, italics added; accord, Cal. Rules of Court, rule 8.204(a)(1)(C); *Lona v. Citibank, N.A.* (2011) 202 Cal.App.4th 89, 96–97, fn. 2 [“[e]ach and every statement in a brief regarding matters that are in the record on appeal, whether factual or procedural, must be supported by a citation to the record”].) Even if we had an adequate record, it would not be our responsibility to search through it seeking evidence in support of Freitas’s position. (*Williams v. Williams* (1971) 14 Cal.App.3d 560, 565.)

governing rules. We denied the motion to augment on the grounds it was untimely. (*People v. Preslie* (1977) 70 Cal.App.3d 486, 492 [“requests for augmentation made after a reasonable time has expired from receiving the record on appeal . . . will be denied absent a strong showing of unusual or unavoidable circumstances giving rise to the delay”]; Ct. App., First Dist., Local Rules, rule 7(b), Augmentation of record [“[a]ppellant should file requests for augmentation . . . within 30 days of the filing of the record”].) After waiting another 23 days, Freitas sought another avenue to augment the record by filing a request for judicial notice, which we also denied as untimely. (*Preslie*, at p. 494 [“in the interest of orderly judicial procedure[,]” requests for judicial notice should “be made well before” briefs are filed].)

More recently, on March 30, 2017, Freitas filed a motion requesting the superior court clerk be ordered to pay sanctions for failing “to follow [Freitas’s] written instructions” in his notice designating record on appeal. We deny Freitas’s motion for sanctions. It is clear the deficiencies in the record resulted from Freitas’s failure to heed the requirements of court rules in designating the record on appeal, not any misstep by the superior court clerk.

Freitas failed to furnish an adequate record. Without the operative complaint and the party pleadings on demurrer, it is simply impossible to determine if the trial court erred in granting the demurrer. Accordingly, we cannot address the merits and the judgment must be affirmed. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295–1296; *Ballard v. Uribe* (1986) 41 Cal.3d 564, 574–575; *Foust v. San Jose Construction Co., Inc.*, *supra*, 198 Cal.App.4th at p. 187.)

III. DISPOSITION

The judgment is affirmed. Bank of America shall recover its costs on appeal.

BRUINIERS, J.

WE CONCUR:

SIMONS, Acting P. J.

NEEDHAM, J.

APPENDIX

Case #19-17394

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

John B. Freitas

Plaintiff-Appellant,

v.

Bank of America,

Defendant- Appellee

APPENDIX D

RELEVANT CONSTITUTIONAL & STATUTORY PROVISIONS

On Appeal from the United States District Court
for the Northern District of California
William Alsup, District Judge, Presiding
Case # D.C. No. 3:19-cv-03347-WHA

Petitioner's Appendix: D

FEDERAL STATUTES, RULES, REGS & CONSTITUTIONAL PROVISIONS

1. United States Constitution, Fourteenth Amendment, § 1: “Due Process” clause and the “equal protection of the law” which specify:

“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, property and the pursuit of happiness without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.”

According to then Hon. Amy Coney Barrett, prior to being appointed the newest Justice of the U.S. Supreme Court, ruled that due process rights come into play “if the other side” uses dishonorable means to prosecute a case. *Rainsberger v. Benner*, 7th app.cir.no. 17 – 2521-Jan. 15, 2019 (Applies to Civil and criminal cases). See also U.S. Supreme Court case *McDonough v. Smith*, U.S. sup.ct.no. 18-485. June 20, 2019.

2. United States Constitution - Fourteenth Amendment, § 3:
(Abridged version)-

No person having previously taken an oath as
a judicial officer of any state shall have engaged in insurrection or rebellion against”... “the Constitution of the United States”,... “or given aid or comfort to the enemies thereof”.

(Unabridged Version)- (with emphasis added)-

“No Person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof.”

(Emphasis Added)

3. Title 18 of the (“U.S.C.”) §§ 1961- 1968 of the Racketeer Influenced and Corrupt Organizations Act (“RICO”) (Appears in Petition @ page(s) 17, 18, 25).

The elements of a RICO violation of 18 U.S.C. §1962 are as follows:

- a. “conduct
- b. of an enterprise;
- c. through a pattern;
- d. of racketeering activity (known as “predicate acts”);
- e. causing injury to”Petitioner/Freitas.

**4. Title 18 of the United States Code (“U.S.C.”) § 1346,
Appears in Petition @ page(s) 25).**

“Honest Services Fraud” which states:

“...the term, scheme or artifice to defraud includes a scheme or artifice to deprive another of the intangible right of honest services.” “Honest Services Fraud” is a valid Federal Claim against Corrupt Government Officials.

5. Misprision of Felony (18 U.S.C § 4 & § 8.0A) & Title 18 U.S.C. § 241 Conspiracy against rights of citizens. (Appears in Petition @ page(s) 17, 25).

“If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—

They shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, they shall be fined under this title or imprisoned for any term of years or for life, or both, or may be sentenced to death.”

6. Title 42 U.S.C § 1983. Fabrication of Evidence (including documents filed with the Court and County Recordors. (Appears in Petition @ page(s) 16, 17, 25).

Title 42, Section 1983 United States Code, provides:
"Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory, subjects, or causes to be subjected, *109 any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

7. Title 28 U.S.C. Section 1738; the Full faith and credit statute.
(Appears in Petition @ page(s) 17).

28 U.S. Code § 1738 - State and Territorial statutes and judicial proceedings; full faith and credit.

“The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.

The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and

its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.”

8. Title 42 U.S.C. § 1986. Actions for neglect to prevent conspiracy
(Appears in Petition @ page(s) 17, 25).

42 U.S.C. § 1986

Current through P.L. 116-344 (published on www.congress.gov on 01/13/2021), except for P. Ls. 116-260 and 116-283

“Section 1986 - Action for neglect to prevent

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in **section 1985** of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding \$5,000 damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.

42 U.S.C. § 1986”

42 U.S.C. § 1985

Section 1985 - Conspiracy to interfere with civil rights(1) Preventing officer from performing duties

If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed,

or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

(2) Obstructing justice; intimidating party, witness, or juror

If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) Depriving persons of rights or privileges

If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

9. Federal Rules of Civil Procedure – **Rule 12(b) (6)** ... (Appears in Petition @ page(s) 38).

“Rule 12. Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing

Primary tabs

(a) TIME TO SERVE A RESPONSIVE PLEADING.

(b) HOW TO PRESENT DEFENSES. Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

(6) failure to state a claim upon which relief can be granted;”

10. **The Rule of Law** (Appears in Petition @ page 25)

DICTIONARY.COM UNABRIDGED BASED ON THE RANDOM HOUSE UNABRIDGED DICTIONARY, © RANDOM HOUSE, INC. 2021

What is the *rule of law*?

The *rule of law* refers to the idea that everyone in a society agrees to be governed by and follow the laws of a society.

Why is the *rule of law* important in a democracy?

The idea of *rule of law* goes all the way back to ancient Greece, and to the work of the philosopher Aristotle. Aristotle’s *Politics* explores the best method to rule a society. He asks: “Is a good leader more important, or are good laws more important?”

important ?

His answer? The best way to rule a society is through very good laws. But for laws to work justly, they have to apply to everyone equally.

The idea of *rule of law* is that once the laws are made, *everyone* should follow them, both the citizens of the country and the government of the country. Powerful people shouldn't get a pass just because they have a lot of money or social status. And government officials shouldn't be able to be above the law just because they created the laws.

This is quite important because it means that the government can't do whatever it wants. It has to follow the rules that have been set. If the absolute law of the nation says "all leaders have to be elected," the current leader cannot legally declare that their own child will inherit the leadership when they die. Nepotism is a big no-no in this *rule of law*.

The *rule of law*, therefore, makes sure governments and people act in accordance with the laws. Governments that operate under the *rule of law* are different than, for example, the absolute monarchies that ruled over medieval Europe, where the king or queen were not always subject to the laws of the land. That's why an event like King John's signing of the Magna Carta in 1215 was a big deal (even though it was signed under duress and soon taken back—that's a story for a different day). It was a big deal because the Magna Carta was a document that, among other things, bound the king to obey the rules too.

In the United States, the Constitution is an important part of the *rule of law*, because the Constitution is considered the fundamental law of the nation. So if there's a conflict between the principles of the Constitution and rules that exist apart from the Constitution, the United States Courts are supposed to uphold the Constitution above all other rules. The *rule of law* in the United States is in a large part determined by what the Constitution says. (Of course, there's the additional complication of how we should interpret the Constitution, since it's relatively brief.)"

11. Code of Judicial Conduct

(Appears in Petition @ page(s) 15, 16, 18 and 26).

Guide to Judiciary Policy Vol. 2: Ethics and Judicial Conduct Pt. A:

Codes of Conduct Ch. 2: Code of Conduct for United States Judges
Introduction

Canon 1: A Judge Should Uphold the Integrity and Independence of the Judiciary

Canon 2: A Judge Should Avoid Impropriety and the Appearance of Impropriety in All Activities

Canon 3: A Judge Should Perform the Duties of the Office Fairly, Impartially and Diligently

Canon 4: A Judge May Engage in Extrajudicial Activities That Are Consistent With the Obligations of Judicial Office

Canon 5: A Judge Should Refrain From Political Activity Compliance with the Code of Conduct

12. Oath of Office of a Federal Judge(Appears in Petition @ Page 18).

Oaths of justices and judges - 28 U.S.C. § 453 (2013)

§453. Oaths of justices and judges

Each justice or judge of the United States shall take the following oath or affirmation before performing the duties of his office:

"I, _____ XXX, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as _____ under the Constitution and laws of the United States. So help me God."

APPENDIX

Case #19-17394

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

John B. Freitas

Plaintiff-Appellant,

v.

Bank of America,

Defendant- Appellee

APPENDIX E

CERTIFIED COURT REPORTER'S "TRANSCRIPT OF PROCEEDINGS"

On Appeal from the United States District Court
for the Northern District of California
William Alsup, District Judge, Presiding
Case # D.C. No. 3:19-cv-03347-WHA

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable William H. Alsup, Judge

JOHN B. FREITAS,
Plaintiff,

VS.

BANK OF AMERICA, N.A.
Defendant.

NO. C 19-cv-03347 WHA

San Francisco, California
Wednesday, November 6, 2019

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiff:

36937 Cherry Street
Newark, California 94560
BY: JOHN B. FREITAS, PRO SE

For Defendant:

SEVERSON & WERSON
One Embarcadero Center - Suite 2600
San Francisco, California 94111
BY: JOEL C. SPANN, ATTORNEY AT LAW

Reported By:

Marla F. Knox, RPR, CRR
Official Reporter

1 Wednesday - November 6, 2019

8:02 a.m.

2 P R O C E E D I N G S

3 ---000---

4 **THE CLERK:** Calling Civil Action 19-3347, Freitas
5 versus Bank of America.

6 Plaintiff and Counsel, please step forward and state your
7 appearances for the record.

8 **THE COURT:** Good morning.

9 **MR. SPANN:** Joel Spann for Bank of America.

10 **THE COURT:** Thank you and --

11 **MR. FREITAS:** John Freitas.

12 **THE COURT:** This is a Motion To Dismiss. Please go
13 ahead.

14 **MR. SPANN:** I believe our Motion sets forth pretty
15 much all the grounds to dismiss this case. Mr. Freitas has
16 already got to --

17 **THE COURT:** You have to speak more clearly and into
18 the microphone, please.

19 **MR. SPANN:** Sorry, Your Honor.

20 I believe our Motion To Dismiss already sets forth all the
21 grounds to dismiss this case. Mr. Freitas has already tried to
22 pursue these claims three times before. They have already been
23 rendered meritless. I don't see how it would be any different
24 this time around.

25 **THE COURT:** All right. Your turn, Mr. Freitas.

1 **MR. FREITAS:** Good morning, Your Honor.

2 **THE COURT:** Good morning.

3 **MR. FREITAS:** May it please the Court. Plaintiff's
4 constitutional rights to due process are not pre-empted by the
5 doctrine of res judicata and collateral estoppel.

6 However, the doctrine of res judicata must conform to the
7 mandate of due process of law; that no person be deprived of
8 personal or property rights by the judgment without notice and
9 an opportunity to be heard. *Bernhard versus Bank of America*.

10 Res judicata does not apply to this case. The prior cases
11 were dismissed on procedural issues, not on the merits of the
12 case.

13 Plaintiff's current First Amended Complaint makes claims
14 based on events that occurred and damages that were incurred
15 after the prior complaints had been dismissed. The issues in
16 Plaintiff's current First Amended Complaint were not litigated
17 in the prior Complaint. The doctrine of res judicata does not
18 apply where Plaintiff was unable to rely on a theory or to seek
19 a remedy because damages occurred after that judication.

20 *Branson versus Sun-Diamond Growers*.

21 In Plaintiff's earlier cases, the First Appellate
22 District, Division Five, ruling issued on May 30th, 2017 -- at
23 page 5 six lines from the bottom. See Exhibit A asterisk of
24 the Plaintiff's request for judicial notice -- specifies that
25 the merits were not addressed which refutes Defendant B of A's

1 Motion To Dismiss.

2 Plaintiff will prove injuries that were cost --

3 **THE COURT:** Hang on a second. Is that correct what it
4 says?

5 **MR. SPANN:** I believe he is referring to procedural
6 dismissal of his appeal. The merits of his case were already
7 adjudicated in the lower courts. That is all substantive
8 grounds.

9 **THE COURT:** Go ahead. Is that true, Mr. Freitas, that
10 the merits were adjudicated in the lower courts?

11 **MR. FREITAS:** No, sir.

12 **THE COURT:** Well, what is your view?

13 **MR. FREITAS:** They were dismissed on procedural
14 issues, not on the merits. The merits were never addressed by
15 the lower courts or by the Court of Appeal. And the Court of
16 Appeal addressed it; that the merits were never addressed. And
17 the injuries therein occurred after the cases were dismissed.

18 **THE COURT:** Well, how did it get dismissed then in the
19 lower courts?

20 **MR. FREITAS:** I'm sorry?

21 **THE COURT:** There have been so many of your lawsuits.
22 Pick one of them that -- and tell me how it got dismissed in
23 the lower court.

24 **MR. FREITAS:** For example, we can pick the first one
25 with Judge Gee. He claimed -- he stated that I had not denied

1 that it was my signature on the -- on the date of trust of
2 October 25, 2005. That is not true because I clearly stated on
3 the page 12, line 18, that it was not my signature. But yet
4 he -- and we had pointed out to the Judge. And he says: I
5 don't care. Even so it was right there in writing.

6 **THE COURT:** Well, that sounds like he made a ruling on
7 the merits even if he -- let's say he was incorrect, but he
8 nevertheless made a ruling on the merits. And then that case
9 goes up on appeal. And for some reason you were unable to
10 explain to the Court of Appeal how come he made a mistake.
11 That's still on the merits.

12 **MR. FREITAS:** I did explain to the Court and the Court
13 of Appeal. None of the documents were transferred from the
14 superior court to the Court of Appeal conveniently even so
15 we --

16 **THE COURT:** They almost never. What makes you think
17 they should be? It is your job as the Appellant to provide the
18 copies to the Court of Appeal, what they need to see.

19 **MR. FREITAS:** We did, Your Honor. We also --

20 **THE COURT:** Then the records were there.

21 **MR. FREITAS:** We filed a number of motions to have the
22 documents transferred even so we had already filed, and they
23 were not transferred.

24 **THE COURT:** So what? Why does that --

25 **MR. FREITAS:** The Court of Appeal --

1 **THE COURT:** Why does that undo a ruling on the merits
2 even if it was erroneously entered?

3 **MR. FREITAS:** Because the Court of Appeal clearly
4 stated that they had no documentation in order to look for
5 it -- in order to be able to rule even so it affirmed the lower
6 court's decision. It clearly stated that it did not address
7 the merits and that the merits were not addressed, period.

8 And the case before this Court, the causes of action are
9 not the same. The injuries have occurred since then.

10 **THE COURT:** Counsel is saying that the appeal was
11 dismissed because you goofed up on some procedural thing on
12 appeal, and so they dismissed your appeal for that reason. Did
13 I understand you correctly, Counsel?

14 **MR. SPANN:** That's correct, Your Honor.

15 **THE COURT:** All right. So if you goofed up the
16 appeal; and they didn't address the merits but they dismissed
17 your appeal on a procedural ground, that doesn't alter the fact
18 that the lower court ruled on the merits.

19 **MR. FREITAS:** They did not, Your Honor. I never had
20 the opportunity to present the merits to a jury in a trial of
21 fact, which I required and requested from the first case. The
22 judges did not -- I never had the opportunity to present the
23 facts of the case to any judge. There were a couple minor
24 things stated, but there were never -- the merits of the case
25 were never presented to a judge.

1 **THE COURT:** Most cases never get to a jury. They are
2 resolved on motions. So what is so unusual about that?

3 **MR. FREITAS:** Well, the unusual is that this case is
4 not like any other case throughout this nation. I have
5 searched thousands and thousands of cases.

6 This is a line of credit that was established for an
7 emergency cases; that no money was ever withdrawn from it; that
8 no money was ever transferred on behalf of Plaintiff to the
9 benefit of Plaintiff. And B of A has no admissible evidence
10 that any money was ever withdrawn. And even so, they have
11 altered a deed of trust and they have foreclosed on a deed of
12 trust that the debt had already been paid off.

13 It has -- the October 12th, 2005, was the deed of trust in
14 which I established. Defendant B of A altered that date after
15 it was closed -- without my knowledge or my authorization --
16 and recorded a deed of trust on -- the same deed of trust on
17 October 25th, 2005, as if it were another deed of trust.

18 **THE COURT:** You are saying that these lines of credit
19 from B of A or Countrywide Bank were never drawn down on?

20 **MR. FREITAS:** No, sir.

21 **THE COURT:** Not even one penny?

22 **MR. FREITAS:** Not even one penny.

23 **THE COURT:** Is that true?

24 **MR. SPANN:** No, Your Honor. It was a line of credit.
25 At the origination 140 grand was used to pay off a previous

1 loan, that was -- I believe, Mr. Freitas cites to a
2 November 2005 --

3 **THE COURT:** You have to speak more clearly.

4 **MR. SPANN:** Sorry, Your Honor. I believe Mr. Freitas'
5 Complaint cites to a November 2005 re-conveyance. That was as
6 a result of paying his loan. It was used to pay off a \$140,000
7 existing lien. Then Mr. Freitas drew down periodically on the
8 loan. I believe November 20th, 2006, he drew \$69,000 on the
9 HELOC.

10 **THE COURT:** Is that true?

11 **MR. FREITAS:** No, sir. Your Honor, Exhibit A, which
12 shows the October 12th, 2005, deed of trust on the First
13 Amended Complaint.

14 Exhibit B shows that the debt -- because it was never
15 withdrawn, twelve years later, on July 1, 2016, a deed of full
16 re-conveyance was issued.

17 Exhibit C, is a deed of trust in which Bank of America
18 foreclosed.

19 **THE COURT:** Please just -- see, you are going off into
20 tangents. Right now I just want to know, Counsel said that
21 that loan that you are complaining about that you said was
22 never drawn down was used to pay off some other loan.

23 **MR. FREITAS:** That's not true, Your Honor. And B of A
24 has no admissible evidence to prove it.

25 **THE COURT:** Those are two different things. I'm

1 asking you: Was it used for that purpose?

2 **MR. FREITAS:** No, sir.

3 **THE COURT:** Now, let me tell you what I find strange
4 about your -- you say you opened up two lines of credit.

5 **MR. FREITAS:** No, sir. I opened up one line of
6 credit.

7 **THE COURT:** You said there were two a while ago.

8 **MR. FREITAS:** No. The second one was B of A who
9 altered -- made a copy of the October 12th, 2005; altered the
10 date. And as evidence both of these, even the altered -- they
11 changed the date, but they could not change the identification
12 numbers. They have the same identification number, same escrow
13 closing ID number, same document ID number, same mortgage
14 identification number. And that was paid off.

15 **THE COURT:** Why would you borrow money and not draw
16 down on it?

17 **MR. FREITAS:** Because, Your Honor, my mom had passed
18 away in 2003. My dad was an elder gentleman. And I -- after
19 the funeral of my mom, I wasn't sure if I had any money to take
20 care of my dad if my dad had passed away or if there was any
21 medical bills. But by the grace of God there was no money
22 withdrawn. We never needed it.

23 And as evidence of that, eleven years later, the bank
24 issued a deed of full re-conveyance; that the debt was paid
25 off. What I did not know until then was that the B of A and

1 Countrywide had made a copy of that deed of trust, and they
2 ~~changed the date; but they could not change the identification~~
3 numbers. And, therefore --

4 **THE COURT:** How much of that is true?

5 **MR. SPANN:** The bank -- these two deeds of trust
6 represent the same loan. The reason that the second was
7 recorded was to correct the first because Mr. Freitas was
8 unable to have his ex-wife sign the first deed of trust. As
9 you can see, the recorded copy has a line crossed out under
10 Fatima. And the second one doesn't have a signature line for
11 her. It doesn't make her on the deed of trust. That is the
12 only reason why it was recorded.

13 **THE COURT:** Why was there a re-conveyance?

14 **MR. SPANN:** The re-conveyance was to clear up any
15 confusion as to the validity of the first deed of trust as to
16 that separately encumbering -- in a separate lien on the
17 property rather than just establishing the second as a
18 corrected deed of trust.

19 **THE COURT:** Did you send a letter to Mr. Freitas
20 explaining all of that?

21 **MR. SPANN:** I actually was in contact with Mr. Freitas
22 back then personally. We discussed this issue back in 2016.
23 We recorded it just to clear up any confusion at that point.
24 And this has been going on for a while now.

25 ~~**THE COURT:** Now, you are telling me that he did draw~~

1 down on the loan?

2 ~~MR. SPANN:~~ That's correct. I have a loan payment
3 history. I know it is outside the scope of our Motion to
4 Dismiss. I also have the settlement statement from HUD that
5 shows the \$140,000 initial draw for repaying off the --

6 **THE COURT:** Can I see that?

7 **MR. SPANN:** Yes, Your Honor.

8 (Whereupon, a brief pause was had.)

9 **THE COURT:** Well, this is a long -- you have -- this
10 is many pages. You have to put a sticker in.

11 **MR. FREITAS:** Your Honor, there is no admissible
12 evidence here of any money being withdrawn down.

13 **THE COURT:** Just a minute. Counsel, take this long
14 document back and tag the part -- give Counsel a tag so that he
15 can tag what he wants me to read and then circle it so that I
16 can look at it.

17 (Whereupon, a brief pause was had.)

18 **THE COURT:** Show Mr. Freitas what you are about to
19 show me before you hand it up.

20 **MR. FREITAS:** Where is the transfer or check that
21 shows that that is actually done? This can be done in a
22 computer by anyone.

23 **MR. SPANN:** Yeah, usually it is a card that they give
24 you or they give you a checkbook --

25 ~~THE COURT:~~ By the way, you two don't get to argue

1 with each other. You only get to talk to me.

2 ~~MR. SPANN:~~ You don't transfer any money without any
3 evidence, wire transfers or --

4 THE COURT: No.

5 MR. SPANN: -- or escrow.

6 THE COURT: That was not the point. He is trying to
7 show me that there is a bank record showing that the money was
8 used to pay off some other. And now you are backing up to yet
9 a different point.

10 MR. FREITAS: Well, Your Honor, this could be made by
11 anyone.

12 THE COURT: I want to see it, Mr. Freitas. Counsel,
13 can you show it to me?

14 MR. SPANN: Yes, Your Honor.

15 THE COURT: How long is this going to take you?

16 (Whereupon, a brief pause was had.)

17 THE COURT: You have circled something called initial
18 draw 2005, \$138 plus thousand.

19 MR. SPANN: Correct, Your Honor.

20 THE COURT: What does that mean?

21 MR. SPANN: That is the same note that is reflected on
22 the last line on the last page. It's the amount used to pay
23 off the existing lien on the property.

24 THE COURT: Who was the owner of that lien?

25 ~~MR. SPANN:~~ Countrywide.

1 **THE COURT:** So then there were a bunch of subsequent
2 draws. What are those for?

3 **MR. SPANN:** Those are times that Mr. Freitas drew down
4 on the line of credit.

5 **THE COURT:** On his own?

6 **MR. SPANN:** For his own purpose. We -- the bank
7 doesn't really question it.

8 **THE COURT:** The bank what?

9 **MR. SPANN:** I don't believe the bank questions the
10 reasoning behind Mr. Freitas' drawdowns.

11 **THE COURT:** Well, there are seven or eight of those.

12 **MR. SPANN:** Correct, Your Honor.

13 **THE COURT:** For pretty large sums.

14 **MR. SPANN:** True.

15 **THE COURT:** Mr. Freitas, you deny that you drew down
16 those amounts?

17 **MR. FREITAS:** I do, Your Honor.

18 **THE COURT:** You are saying that the bank has phoned
19 up this evidence?

20 **MR. FREITAS:** The bank created these documents as they
21 created the second deed of trust. And they have been able to
22 do so many things; as my search has taken me to so many
23 directions as to what Bank of America has done and to foreclose
24 on properties illegally as they have done on mine. They
25 have -- any withdraws is done -- if it is a check, there would

1 be a copy of a check.

2 **THE COURT:** Well, if they showed me a check, you would
3 say it is a forgery, wouldn't you?

4 **MR. FREITAS:** No, sir, because if it is written by me,
5 and if it is deposited -- it has got to be deposited somewhere.
6 Where was it deposited? I mean --

7 **THE COURT:** That's your point. You would say: Oh,
8 yes, that's a check but where was it deposited.

9 **MR. FREITAS:** No, sir.

10 **THE COURT:** You would always have some further
11 question to Mr. --

12 **MR. FREITAS:** If I --

13 **THE COURT:** He has given me some evidence on its face,
14 at least as a bank record, indicating that you drew down on the
15 loan.

16 **MR. FREITAS:** No, sir. If I write a check from a line
17 of credit, that check has got to be deposited somewhere. And
18 then it goes back to the bank, which means the bank would then
19 have a record of where that money was deposited.

20 I have asked the bank to provide any evidence that that --
21 that this record is real, and the bank has not been able to
22 provide anything; no admissible evidence. They claim that it
23 was transferred, for example, the initial transfer; but there
24 is no admissible evidence of such. And this record can be
25 created just by anyone in a computer.

1 **THE COURT:** I'm handing this document back to Counsel.

2 All right. I give you one more minute to say whatever
3 else you want to say, Mr. Freitas. I have other cases that I
4 have to go to.

5 **MR. SPANN:** Your Honor, if I may?

6 **THE COURT:** Yes.

7 **MR. SPANN:** One other thing about the packet of
8 documents, if you notice the actual agreement for the HELOC on
9 the last page, it has the same date as the second deed of trust
10 representing that it was the corrected deed of trust and the
11 corrected loan documents.

12 **THE COURT:** Thank you. Mr. Freitas, I will give you
13 one more minute.

14 **MR. FREITAS:** Thank you, Your Honor.

15 Plaintiff will prove injuries that were caused by
16 Defendant B of A. Plaintiff's home was illegally foreclosed
17 on, a void unlawful detainer action which was based on the void
18 defective copy and then altered deed of trust recorded on
19 October 25, 2005. *Dymits versus Bank of American Brands* (sic).

20 Plaintiff has been deprived of his due process rights
21 guaranteed under the California Constitution, Section 1,
22 Article 1, of the California Constitution. In the U.S.
23 Constitution, Section 1, 14th Amendment, U.S. Constitution;
24 each of which were violated when the homeowner was
25 involuntarily subjected to unlawful detainer, UD, forum,

1 Each of these cases reflect the Court's -- excuse me --
2 recognition that when complex issues of title are involved, the
3 parties' constitutional rights to due process and the
4 litigation of those issues cannot be subordinated to the
5 summary procedures of unlawful detainer. *Asuncion versus*
6 *Superior Court* --

7 **THE COURT:** All right. You have had more than -- I
8 have one last question for you. In the State court did you
9 have a lawyer?

10 **MR. FREITAS:** No, sir. I couldn't afford -- I'm still
11 not able to afford one, but I am educated.

12 **THE COURT:** Of course. I can see that.

13 **MR. FREITAS:** And I do have --

14 **THE COURT:** But, you know, the thing is if you go into
15 court and you goof it up -- even if you were in the right,
16 sometimes people goof it up. I see that occasionally in this
17 court. Sometimes they even have a lawyer, and the lawyer goofs
18 it up; and then the person that should have won loses.

19 **MR. FREITAS:** Well, Your Honor --

20 **THE COURT:** And that's the way the American system
21 works.

22 **MR. FREITAS:** When I was in the military --

23 **THE COURT:** It is a concession to the shortness of
24 life. We have to move on and go to the next problem.

25 **MR. FREITAS:** When I was -- this case is not like any

1 other case. This is a situation where a bank did unlawful
2 and --

3 **THE COURT:** The Judge disagreed with you.

4 **MR. FREITAS:** Without my knowledge --

5 **THE COURT:** The Judge disagreed with that. You had
6 your chance. You could have made that argument. You probably
7 did make that argument and you lost.

8 **MR. FREITAS:** Your Honor --

9 **THE COURT:** You lost. Now you want to come and get a
10 second crack at the apple with a brand new judge in federal
11 court.

12 **MR. FREITAS:** Because the injuries in this case
13 happened after the last cases were dismissed. And in this case
14 the causes of action are not the same. As the courts in
15 California have recognized that these issues of title, we
16 didn't have a --

17 **THE COURT:** Tell me what exactly happened after
18 that -- all that litigation that is new for this case. What
19 happened?

20 **MR. FREITAS:** Defendant has foreclosed on a false,
21 altered deed of trust. Defendant has evicted Plaintiff from
22 his property.

23 **THE COURT:** What do you say to that point and why res
24 judicata doesn't apply to something that happened after the
25 fact?

1 **MR. SPANN:** Well, res judicata still applies because
2 the same underlying facts are the same. Mr. Freitas' claims
3 are all based upon the purported forged deed of trust. Just
4 because the foreclosure occurred after the fact and because he
5 wants to bring it up de novo doesn't change the facts. He
6 still -- these claims are already litigated. De novo doesn't
7 give him any --

8 **THE COURT:** The foreclosure wasn't litigated.

9 **MR. SPANN:** The underlying facts was --

10 **THE COURT:** Give me the underlying fact that was
11 litigated.

12 **MR. SPANN:** He says -- the whole basis of his claim is
13 that it was a void, forged deed of trust. That fact -- the
14 possibility that an equitable lien --

15 **THE COURT:** Show me the Judge's ruling that rejected
16 that.

17 **MR. SPANN:** It is docket number 46 starting at page
18 111.

19 **THE COURT:** So there is a written ruling somewhere?

20 **MR. SPANN:** There is a written ruling from April of
21 2016.

22 **THE COURT:** And summarize what it says.

23 **MR. SPANN:** That he doesn't argue -- he doesn't
24 dispute that he signed a deed of trust containing the essential
25 terms; that there is any difference in the deeds of trust; that

1 there is any difference in the Plaintiff's obligations. Pretty
2 much establishing that -- he doesn't really challenge the
3 actual validity of a lien on the property.

4 While he does bring up de novo now, the underlying court
5 already decided the issue of whether or not his challenge to
6 assignment of the deed of trust is voidable by going back to
7 Mr. Freitas' own complaint where he asserts that the assignment
8 was voidable. De novo wouldn't change his outcome.

9 **THE COURT:** I'm sorry. I have other lawyers out there
10 waiting for their turn. The case is under submission. I will
11 get an order out soon. Thank you.

12 **MR. FREITAS:** Thank you, Your Honor.

13 **MR. SPANN:** Thank you.

14 (Proceedings adjourned at 8:27 a.m.)

15 ---oOo---

16 **CERTIFICATE OF REPORTER**

17 I certify that the foregoing is a correct transcript
18 from the record of proceedings in the above-entitled matter.

19
20 **DATE:** Tuesday, December 17, 2019

21
22
23 *Marla Knox*

24
25 Marla F. Knox, RPR, CRR
U.S. Court Reporter

APPENDIX

Case #19-17394

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

John B. Freitas

Plaintiff-Appellant,

v.

Bank of America,

Defendant- Appellee

APPENDIX F

UD COMPLAINT OF COMMUNITY

On Appeal from the United States District Court
for the Northern District of California
William Alsup, District Judge, Presiding
Case # D.C. No. 3:19-cv-03347-WHA

ENDORSED
FILED
ALAMEDA COUNTY

JUN 21 2019

CLERK OF THE SUPERIOR COURT

By TANIA PIERCE Deputy

Timothy A. Larsen (SBN 201326)
Attorney at Law
1032 East 14th Street
San Leandro, CA 94577
(510) 238 - 9333

Attorney for Plaintiff
COMMUNITY FUND, LLC

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

LIMITED JURISDICTION

COMMUNITY FUND, LLC,

Plaintiff,

Vs.

JOHN B. FREITAS, and DOES 1 through 10,

Defendants.

) Case No.: Rg19024048
)
) VERIFIED COMPLAINT FOR UNLAWFUL
) DETAINER
)
) ACTION BASED ON CCP §1161a
)
) AMOUNT DEMANDED DOES NOT
) EXCEED \$10,000
)
)
)
)

Plaintiff alleges:

1. Plaintiff COMMUNITY FUND, LLC (hereafter "Plaintiff") is an individual over the age of 18.

2. The real property, possession of which is sought in this action, is situated in Alameda County in the above-named judicial district, and is commonly described as:
36549 Cedar Boulevard, Newark, CA 94560 (hereafter "Subject Premises").

2. Defendant JOHN B. FREITAS (hereafter "Defendant") is the occupant of the Subject Premises, which is residential real property, possession of which is sought in this action.
Plaintiff is informed and believes and on that basis alleges that at all times relevant to this

1 complaint, Defendant, and DOES 1 through 10, inclusive, are in possession of the Subject
2 Premises.

3 3. The true names and capacities of DOES 1 through 10, inclusive, whether
4 individual, corporate, associate, or otherwise, are unknown to Plaintiff at this time, who therefore
5 sues said Defendant(s) by such fictitious names, and when the true names and capacities of such
6 Defendant(s) are ascertained, Plaintiff will seek leave of this Court to amend this complaint to
7 insert same.

8 4. Plaintiff is informed and believes and on that basis alleges that each Defendant(s)
9 named in this Complaint is, and at all times relevant to this complaint was, the agent and
10 employee of each other Defendant(s) named in this Complaint, and was at all times acting within
11 the course and scope of such agency and employment.
12

13 5. On or about June 3, 2019, Plaintiff purchased the Subject Premises in accordance
14 with Section 2924 et seq. of the California Civil Code, and the title under the sale has been duly
15 perfected. Defendant is the former owner or claim under such persons. A copy of said Trustee's
16 Deed is attached hereto, marked as **Exhibit A**, and incorporated herein by this reference.

17 6. Plaintiff is the owner of, and entitled to immediate possession of the property.

18 7. On June 13, 2019, Plaintiff caused to be served on Defendant a written to Notice
19 to Vacate requiring Defendant to vacate and deliver up possession of the Subject Premises to
20 Plaintiff within three (3) days after service of said notice. A true and correct copy of the Notice
21 to Vacate is attached hereto as **Exhibit B** and is incorporated by reference.
22

23 8. The Notice to Vacate was served in compliance with Section 1162 of the Code of
24 Civil Procedure, as stated in the declaration of Proof of Service. A true and correct copy of the
25 declaration of Proof of Service is attached hereto as **Exhibit C**, and is incorporated by reference.

9. Plaintiff is informed and believes, and thereon alleges, that Defendant was party subject of the Civil Code Section 2924 sale, or claims under such persons.

10. On June 17, 2019, the period stated in the Notice to Vacate expired at the end of the day. Defendant failed to comply with the terms of the Notice according to its terms, and, has refused to deliver up possession and continue in possession of the Subject Premises without permission or consent of Plaintiff.

11. The reasonable rental value of the Subject Premises is \$63.33 per day, and damages to Plaintiff caused by Defendant unlawful detention will accrue at that rate beginning June 18, 2019 and will continue to accrue at that rate as long as Defendant remains in possession of the Subject Premises.

12. Pursuant to California Evidence Code §453, Plaintiff states that at the time of trial it will request judicial notice be taken of certified copy of the recorded document, referred to in paragraph 5 hereof and all proof of service then on file herein.

WHEREFORE, Plaintiff prays for judgment against Defendant, and each of them, as follows:

1. Possession of the Subject Premises;
2. Costs incurred in this proceeding;
3. Damages at the rate of \$63.33 per day from June 18, 2019 for each day that Defendant remains in possession through entry of judgment; and,
4. Such other and further relief as the Court may deem just and proper.

DATED: June 20, 2019

Timothy A. Larsen
Attorney for Plaintiff
COMMUNITY FUND, LLC

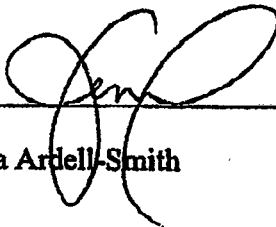
RA 03

VERIFICATON

I am a duly appointed officer with Plaintiff or its owner, and am authorized to sign this verification on behalf of Plaintiff in this action. I have read the Complaint for Unlawful Detainer. I am informed and believe that the foregoing is true and correct.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this verification was executed this 25th day of June, 2019.

SIGNATURE:



NAME:

Jessica Ardell-Smith

RA04

APPENDIX

Case #19-17394

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

John B. Freitas

Plaintiff-Appellant,

v.

Bank of America,

Defendant- Appellee

APPENDIX G

“DEED OF TRUST” RECORDED OCT. 25TH, 2005

On Appeal from the United States District Court
for the Northern District of California
William Alsup, District Judge, Presiding
Case # D.C. No. 3:19-cv-03347-WHA

Recording Requested By:
J. ARIAS

Lender Service - P.D.
Fidelity National Financial

After Recording Return To:
COUNTRYWIDE HOME LOANS, INC.

MS SV-79 DOCUMENT PROCESSING
P.O. Box 10423
Van Nuys, CA 91410-0423
Prepared By:
BARRINGTON TAYLOR

51692290
092A-0985-021

15 Lines Above This Line For Recording Data

113803754
[Barcode/Cloning ID]

06011380375410005
[Date ID]

DEED OF TRUST AND ASSIGNMENT OF RENTS

MIN 1001327-0000945117-3

This Deed of Trust secures an obligation which calls for payment of interest at a variable interest rate.
THIS DEED OF TRUST is made this 14th day of OCTOBER, 2005, between
JOHN B FREITAS, A/K/A JOHN B FREITAS, A MARRIED MAN AS HIS SOLE AND
SEPARATE PROPERTY

whose address is:
36549 CEDAR BLVD, NEWARK, CA 94560

herein called "Trustor,"

CTC REAL ESTATE SERVICES

100 COUNTRYWIDE WAY, MSN SV-88, SEMI VALLEY, CA 95065

herein called "Trustee," and MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., ("MERS")
a Delaware corporation with an address of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.
MERS is the "Beneficiary" under this Deed of Trust and is acting solely as a nominee for
Countrywide Bank, N.A.

("Lender" or "you") and its successors and assigns, with an address of
1199 North Fairfax St. Ste. 500, Alexandria, VA 22314

Trustor irrevocably grants, transfers and assigns to Trustee, in trust and with power of sale, all of the real
property in the City or Town of NEWARK, County of

ALAMEDA

State of California, having the street address of
36549 CEDAR BLVD, NEWARK, CA 94560-2532

* MERS HELOC - CA Deed of Trust
12088-CA (02/00/10)

Page 1 of 10

Initials: 



23895



113803754100009451173

and more specifically described as:
SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

Parcel ID Number 092A0985021 together with all improvements now or hereafter erected on the property, and all easements, rights, appurtenances, rents (subject however to the right and authorities given herein to Lender to collect and apply such rents), royalties, mineral, oil and gas rights and profits, water, water rights, and water stock, and all fixtures now or hereafter attached to the property, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the property covered by this Deed of Trust; and all of the foregoing, together with said property (or the leasehold estate if this Deed of Trust is on a leasehold) are herein referred to as the "Property."

TRUSTOR UNDERSTANDS and agrees that MERS is a separate corporation acting solely as nominee for Lender and Lender's successors and assigns, and holds only legal title to the interests granted by Trustor in this Deed of Trust, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property, and to take any action required of Lender including, but not limited to, releasing or canceling this Deed of Trust.

1. THIS DEED OF TRUST SECURES:

a. All of the obligations of Trustor in favor of Lender or order under the terms of a revolving credit agreement dated OCTOBER 14, 2005, herein called Agreement. The Agreement provides, among other things, for the payment of all sums advanced by Lender from time to time pursuant to the Agreement and for the payment of interest. The maximum principal obligation under the Agreement to be secured by this Deed of Trust at any one time is THREE HUNDRED FORTY NINE THOUSAND EIGHT HUNDRED FORTY and 00/100 Dollars (\$ 349,840.00) unless Lender, with Trustor's written consent, hereafter increases this amount. Advances made by Lender to protect the security of this Deed of Trust or to preserve the Property shall not be subject to the limitation of the preceding sentence.

The security of this Deed of Trust shall not be affected by the extension, renewal or modification from time to time of the obligations, instruments or agreements described above.

b. Payment of any and all obligations and liabilities, whatsoever, whether primary, secondary, direct, indirect, fixed or contingent, whether now or hereafter due from Trustor (or any successor in interest to Trustor) whether created directly or acquired by assignment if the document evidencing such obligation or liability or any other writing signed by Trustor (or any successor in interest to Trustor) specifically provides that said obligation or liability is secured by this Deed of Trust.

c. Performance of each agreement of Trustor herein contained or contained in any other agreement, instrument or other writing to which Trustor is a party if the same is written in connection with any of the foregoing.

d. Payment of all sums to be expended by the Lender or Trustee pursuant to the terms hereof.

2. TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR AGREES:

a. To keep the Property in good condition and repair; not to remove or demolish any building or improvement thereon; to complete or cause to be completed any construction of buildings or other improvements thereon which are financed in whole or in part by the indebtedness secured hereby and to restore promptly and in good and workmanlike manner any building or other improvement which may be damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws affecting the Property or requiring any alteration or improvements to be made thereon; not to commit or permit waste thereon; not to commit, suffer or permit any act upon said Property in violation of laws to cultivate, briage, weed, fertilize, fumigate, spray, prune and do all other acts which from the character or use of the Property may be reasonably necessary, the specific enumerations herein not excluding the general.

b. To provide, maintain and deliver to Lender fire and other insurance on the Property satisfactory to and with loss payable to Lender. The amount collected under any fire or other insurance policy may be applied by Lender upon indebtedness secured hereby and in such order as Lender may determine, or at option of Lender, the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default hereunder or invalidate any act done pursuant to such notice.

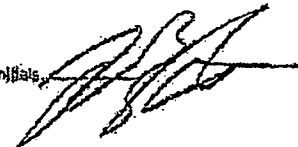
c. To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or power of Lender or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Lender or Trustee may appear, and in any suit brought by Lender to foreclose this Deed of Trust. It is agreed that the Lender shall be subrogated to the claims and liens of all parties whose claims or liens are discharged or paid with the proceeds of the Agreement secured hereby.

d. To pay at least ten days before delinquency all taxes and assessments affecting the Property, including, without limitation, assessment on appurtenant water stock, all encumbrances, charges and liens on the Property or any part thereof, and all costs, fees and expenses of this trust.

e. That should Trustor fail to make any payment or do any act as herein provided, then Lender or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may:

(1) Make or do the same in such manner and to such extent as either may deem necessary or appropriate to protect the security hereof, Lender or Trustee being authorized to enter upon the Property for such purposes.

(2) Appear in and defend any action or proceeding purporting to affect the security hereof or the rights or power of Lender or Trustee.



(3) Pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior and superior hereto.

(4) In exercising any such powers, pay necessary expenses, employ counsel and pay his or her reasonable fees.

f. To pay immediately and without demand all sums so expended by Lender or Trustee, with interest from date of expenditure at the maximum rate allowed by law in effect at the date hereof or at the option of Lender, such sums may be added to the principal balance of any indebtedness secured hereby and shall bear the highest rate of interest as any such indebtedness.

g. To pay for any statement provided for by the law in effect on the date hereof regarding the obligation secured hereby in the amount demanded by the Lender but not to exceed the maximum allowed by law at the time the statement is demanded.

3. IT IS FURTHER AGREED THAT:

a. Any award of damages in connection with any condemnation for public use of or injury to the Property or any part thereof is hereby assigned and shall be paid to Lender who may apply or release such moneys received by it in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

b. By accepting payment of any sum secured hereby after its due date, or after the filing of notice of default and of election to sell, Lender shall not waive its right to require prompt payment when due of all other sums so secured, or to declare default for failure so to pay, or to proceed with the sale under any such notice of default and of election to sell, for any unpaid balance of said indebtedness. If Lender holds any additional security for any obligation secured hereby, it may enforce the sale thereof at its option, either before, contemporaneously with, or after the sale is made hereunder, and on any default of Trustor, Lender may, at its option, offset against any indebtedness owing by it to Trustor, the whole or any part of the indebtedness secured hereby.

c. Without affecting the liability of any person, including, without limitation, Trustor, for the payment of any indebtedness secured hereby, or the lien of this Deed of Trust on the remainder of the Property for the full amount of any indebtedness unpaid, Lender and Trustee are respectively empowered as follows:

(1) Lender may from time to time and without notice (a) release any person liable for the payment of any of the indebtedness, (b) extend the time or otherwise alter the terms of payment of any of the indebtedness, (c) accept additional security therefor of any kind, including Deeds of Trust or mortgages, (d) alter, substitute or release any of the Property securing the indebtedness.

(2) Trustee may, at any time, and from time to time, upon the written request of Lender (a) consent to the making of any map or plat of the Property, (b) join in granting any easement or creating any restriction thereon, (c) join in any subordination or other agreement affecting this Deed of Trust or the lien or charge thereof or, (d) reconvey, without any warranty, all or any part of the Property.

d. Upon (a) written request of Lender or (b) performance of all obligations of the Trustor hereunder and under each and every note, guarantee, Agreement or other writing evidencing the indebtedness secured hereby, and upon surrender of this Deed of Trust to Trustee for cancellation and retention and upon payment of its fees, Trustee shall reconvey, without warranty, the Property then held hereunder. The recital in such reconveyance of any matters of fact shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto." Five years after issuance of such reconveyance, Trustee may destroy said note, guarantee, Agreement or other evidence of indebtedness and this Deed of Trust (unless directed in such request to retain them).

e. Trustor hereby gives to and confers upon Lender the right, power and authority during the continuance of these trusts to collect the rents, issues and profits of the Property and of any personal property located thereon, and hereby absolutely and unconditionally assigns all such rents, issues and profits to Lender; provided, however, that Lender hereby consents to the collection and retention of such rents, issues and profits as they accrue and become payable only if Trustor is not, at such time, in default with respect to payment of any indebtedness secured hereby or in the performance of any agreement hereunder. Upon any such default, Lender may at any time, without notice, either in person, by agent, or by a receiver to be appointed by a court, without regard to the adequacy of any security for this indebtedness hereby secured and without limiting the generality of Section 2.a.(1), above, enter upon and take possession of the Property or any part thereof, and in its own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Lender may determine; also perform such acts of repair, nurturing, cultivation, irrigation, weeding, fertilizing, fumigation, spraying, pruning or proclision, as may be necessary or proper to conserve the value of the Property or any trees, planting or crops growing thereon; also lease the same or any part thereof for such rental, term, and upon such conditions as its judgment may dictate; also prepare for harvest, sever, remove, and sell any crops that may be growing upon the premises, and apply the net proceeds thereof to the indebtedness secured hereby. The entering upon and taking possession of the Property and performance or failure to perform any of the acts described in the preceding sentence, the collection of or failure to collect such rents, issues and profits, and the application thereof as aforesaid, shall not waive or cure any default or notice of default hereunder, or invalidate any act done pursuant to such notice and shall not constitute or otherwise result in any assumption by or liability of Lender for maintenance, depreciation, misuse or risk of loss other than for damage or loss to the Property due to Lender's gross negligence or intentional torts. Trustor also assigns to Trustee, as further security for the performance of the obligations secured hereby, all prepaid rents and all monies which may have been or may hereafter be deposited with said Trustor by any lessee of the premises herein described, to secure the payment of any rent, and upon default in the performance of any of the provisions hereof, Trustor agrees to deliver such rents and deposits to the Trustee.

f. Upon default by Trustor in the performance of any payment or other obligation secured hereby or in the performance of any agreement hereunder, or if, whether voluntarily or involuntarily, there is a sale or transfer of all or any part of (i) the Property or an interest therein, or (ii) a beneficial interest in Trustor and Trustor is not a natural person, or if Trustor ceases to use the Property as Trustor's primary residence, Lender may declare all sums secured hereby immediately due without notice or demand and no waiver of this right shall be effective unless in writing and signed by Lender.

g. Waiver of a right granted to Lender hereunder as to one transaction or occurrence shall not be deemed to be a waiver of the right as to any subsequent transaction or occurrence. Lender may rescind any notice before Trustee's sale by executing a notice of rescission and recording the same. The recording of such notice shall constitute also a cancellation of any prior declaration of default and demand for sale, and of any acceleration of maturity of indebtedness affected by any prior declaration or notice of default. The exercise by Lender of the right of rescission shall not constitute a waiver of any default then existing or subsequently occurring, nor impair the right of the Lender to execute other declarations of default and demand for sale, or notices of default and of election to cause the Property to be sold, nor otherwise affect the note or deed of trust, or any of the rights, obligations or remedies of the Lender or Trustee hereunder.

h. At least three months or any lesser period required by law having elapsed between the recording of the notice of default and the date of sale, Trustee, having first given notice of sale as then required by law, shall sell the Property at the time and place of sale fixed by it in the notice of sale, either as a whole or in separate parcels, and in such order as the Trustee may determine, at public auction to the highest bidder for cash, in lawful money of the United States of America, payable at the time of sale except as otherwise permitted by law. Trustee may postpone sale of all or any portion of the Property by public announcement at the time of sale, and from time to time hereafter may postpone the sale by public announcement, all as permitted by law. Trustee shall deliver to the purchaser its deed conveying the Property so sold, but without any covenant or warranty, expressed or implied. The recital in any such deed of any matters or facts, stated either specifically or in general terms, or as conclusions of law or fact, shall be conclusive proof of the truthfulness thereof. Any person, including Trustee, Trustee or Lender, may purchase at the sale. After deducting all costs, fees and expenses of Trustee and of this trust, including costs of evidence of title in connection with the sale, the Trustee shall apply the proceeds of this sale to the payment of all sums then secured hereby, in such order and manner as may be required by the Lender; the remainder, if any, to be paid to the person or persons legally entitled thereto. If Lender shall elect to bring suit to foreclose this Deed of Trust in the manner and subject to the provisions, rights and remedies relating to the foreclosure of a mortgage, Lender shall be entitled to reasonable attorney's fees and litigation costs.

i. Lender, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Lender and duly acknowledged and recorded in the office of the recorder of the county or counties where said Property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustee, Trustee and Lender hereunder, the book and page where this Deed of Trust is recorded and the name and address of the new trustee.

j. This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Lender shall mean the owner and holder, including, without limitation, pledgees, of the note, guarantees, Agreement, or other evidence of indebtedness secured hereby, whether or not named as Lender herein. In this Deed of Trust, whenever the context so requires, the singular number includes the plural.

k. Trustee accepts this trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Lender or Trustee shall be a party unless brought by Trustee.

l. If Trustor or any successor in interest to Trustor sells, transfers or encumbers any interest in the Property, whether voluntarily or involuntarily, or if a beneficial interest in Trustor is sold or transferred, voluntarily or involuntarily, and Trustor is not a natural person: (a) the transferor and the transferee shall each immediately give written notice of said transfer to the Lender, at its address designated on the first page of this Deed of Trust; (b) if this Deed of Trust secures Trustor's obligation under an Agreement as defined herein, all credit extended by Lender under the Agreement, whether before or after the Property is transferred, shall be secured under this Deed of Trust as if no transfer had occurred except for credit extended by Lender more than five days after it has received the written notices required by this paragraph.

m. The pleading of any statute of limitations as a defense to any and all obligations secured by this Deed of Trust is hereby waived to the full extent permitted by law.

4. WITH REGARD TO ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES, TRUSTOR AGREES:

a. As used in this Paragraph 4:

(1) "Environmental Law" means all federal, state and local law concerning the public health, safety or welfare, environment or a Hazardous Substance, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Sec. 9601 et seq., Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901 et seq., Toxic Substances Control Act, 15 U.S.C. Sec. 2601 et seq., Hazardous Materials Transportation Act, 49 U.S.C. Sec. 1801 et seq., Clean Water Act and Water Quality Act of 1987, 33 U.S.C. Sec. 1251 et seq., Safe Drinking Water Act, 41 U.S.C. Sec. 300f et seq., Clean Air Act, 42 U.S.C. Sec. 7901 et seq., Carpenter-Prezley-Timmer Hazardous Account Act, Cal.Health & Safety Code Sec. 25300 et seq., Hazardous Waste Control Law, Cal.Health & Safety Code Sec. 25100 et seq., Porter-Cologne Water Quality Control Act, Cal.Water Code Sec. 1300 et seq., Hazardous Waste Disposal Land Use Law, Cal.Health & Safety Code Sec. 25220 et seq., Safe Drinking Water and Toxic Enforcement Act of 1986, Cal.Health & Safety Code Sec. 25249.5 et seq., Hazardous Substances Underground Storage Tank Law, Cal.Health & Safety Code Sec. 25280 et seq., Air Resources Law, Cal.Health & Safety Code Sec. 3900 et seq., Hazardous Materials Release Response Plans and Inventory, Cal.Health & Safety Code Sec. 25500 et seq., and Toxic Pits Cleanup Act of 1984, Cal.Health & Safety Code Sec. 25208 et seq.

(2) "Hazardous Substance" means any substance which has characteristics of ignitability, corrosivity, toxicity, reactivity or radioactivity or other characteristics which render it dangerous or potentially dangerous to public health, safety or welfare or the environment, including without limitation, (i) petroleum or any fraction or other byproduct thereof, (ii) asbestos, (iii) lead, (iv) cyanide, (v) polychlorinated biphenyls, (vi) urea formaldehyde and (vii) anything defined as a "hazardous material," "toxic substance," "hazardous substance," "hazardous waste" or "waste" under any Environmental Law, including without limitation, "hazardous substance" as defined in Cal.Health & Safety Code Sec. 25316 and "waste" and "hazardous substance" as defined in Cal.Water Code Sec. 13050(d) and Sec. 13050(p)(7), respectively. The term is intended by Trustor and Lender to be interpreted in its most comprehensive and cumulative sense.

b. Trustor represents and warrants that except as disclosed to and acknowledged in writing by Lender before the date of this Deed of Trust:

(1) No Hazardous Substance has been located, used, manufactured, generated, treated, handled, stored, spilled, disposed of, discharged or released by any person on, under or about the Property.

(2) Trustor has no knowledge of or reason to believe that there is any pending or threatened investigation, assessment, claim, demand, action or proceeding of any kind relating to (i) any alleged or actual Hazardous Substance located under or about the Property or (ii) alleged or actual violation or noncompliance by Trustor or any tenant of Trustor with regard to any Environmental Law involving the Property.

(3) Neither Trustor nor any tenant of Trustor is required by any Environmental Law to obtain or maintain any permit, license, financial responsibility certificate or other approval as a condition to its business operations or in connection with its use, development or maintenance of the Property.

c. Trustor represents and warrants that Trustor and every tenant of Trustor have been, are and will remain in full compliance with any Environmental Law applicable to its business operations and its use, development or maintenance of the Property.

d. Trustor agrees to permit, or cause any tenant of Trustor to permit, Lender to enter and inspect the Property at any reasonable time for purposes of determining, as Lender deems necessary or desirable: (i) the existence, location and nature of any Hazardous Substance on, under or about the Property, (ii) the existence, location, nature, magnitude and spread of any Hazardous Substance that has been spilled, disposed of, discharged or released on, under or about the Property or (iii) whether or not Trustor and any tenant of Trustor are in compliance with applicable Environmental Law. If Trustor or its tenant fails to comply fully with the terms hereof, Lender may obtain affirmative injunctive relief therefor.

e. Trustor agrees to indemnify and hold Lender and its successors or assigns harmless from and against all losses, claims, demands, liabilities, damages, cleanup, response and remediation costs, penalties and expenses, including, without limitation, all costs of litigation and attorneys' fees, which Lender and its successors and assigns may directly or indirectly sustain or suffer as a consequence of any inaccuracy or breach of any representation, warranty or promise made in this Deed of Trust in connection with any Hazardous Substances or Environmental Law. Notwithstanding any of the language in this Deed of Trust to the contrary, this indemnity covers claims asserted after all the indebtedness secured by this Deed of Trust has been paid and discharged, whether or not this Deed of Trust has also been reconveyed to Trustor. The only exclusions hereto may relate to claims arising out of the affirmative acts of Lender or of a third party after Trustor's interest in the Property has terminated.

f. The provisions of this Paragraph 4 shall not be affected by the acquisition by Lender or its successors or assigns of any ownership or other interest in the Property beyond Lender's security interest in the Property created under this Deed of Trust, whether or not such acquisition is pursuant to the foreclosure of this Deed of Trust or a merger of the interest of the Lender or its successors and assigns in the Property.

5. **ADDITIONAL PROVISIONS:**

a. The execution of this Deed of Trust by any person who has no present interest in the Property shall not be deemed to indicate that such an interest presently exists. Rather, execution of this Deed of Trust by such a person shall constitute such person's agreement that if such person hereafter acquires an interest in the Property, such interest shall be subject to the interest granted hereunder.

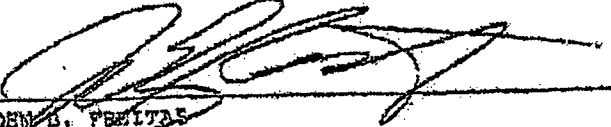
b. The execution of this Deed of Trust by any person who has a present interest in the Property shall not in itself be deemed to indicate that such person is liable to Lender for any obligation described in Section 1, above. Any personal liability of such person to Lender shall be determined on an independent basis (such as execution of the document or documents evidencing the obligation described in Section 1, above). Execution of this Deed of Trust by any such person shall nevertheless indicate that such person's interest in the Property shall be subject to the interest granted hereunder.

DOC ID #: 00011380375410005

The undersigned Trustors request that a copy of any notice of default, and of any notice of sale hereunder, be mailed to their respective addresses set forth below.

By signing below, Trustor agrees to all the terms and conditions of this Deed of Trust.

Mailing Address For Notices


JOHN B. FREITAS
36549 CEDAR BLVD
NEWARK, CA 94560

JOHN B. FREITAS

State of California
County of Alameda

On Oct. 17, 2005

, before me

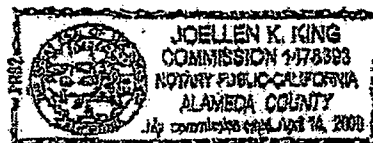
Joellen K. King, Notary Public
personally appeared

John B. Freitas

, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Joellen K. King



Prepared by: BARRINGTON TAYLOR

Countrywide Bank, N.A.

DATE: 10/14/2005

CASE #:

DOC ID #: 00011380375410005

BORROWER: JOHN B. FRITAS

PROPERTY ADDRESS: 36549 CEDAR BLVD

NEWARK, CA 94560-2532

Branch #: 0000869

1300 SARGRASS CORP PKWY, #250

SUNRISE, FL 33323

Phone: (866)751-5767

Sr Fax No.: (800)291-8910

LEGAL DESCRIPTION EXHIBIT A

FHA/VA/CONV

* Legal Description Exhibit A

1C404-JX (04/03)(d)



* 2 8 9 9 1 *



* 1 1 3 8 0 3 7 5 4 8 0 0 0 0 1 0 9 8 6 *

EXHIBIT "ONE"

Parcel 1, as shown on that Parcel Map filed for record in the office of the Recorder of the County of Alameda, State of California, on July 30, 1973, in Book 79 of Maps, page 97.

Assessor's Parcel No: 092A-0985-021

ILLEGIBLE NOTARY SEAL DECLARATION
(GOVERNMENT CODE 27361.7)

I DECLARE UNDER PENALTY OF PERJURY THAT THE NOTARY
SEAL ON THE DOCUMENT TO WHICH THIS STATEMENT IS
ATTACHED, READS AS FOLLOWS:

NAME OF NOTARY PUBLIC: Union R. King

COMMISSION NUMBER: 1478202

NOTARY PUBLIC STATE: California

COUNTY: Alameda

MY COMM. EXPIRES: 1 APR 14 2008
(DATE)

SIGNATURE OF DECLARANT: [Signature]

PRINT NAME OF DECLARANT: S. Giron

CITY AND STATE OF EXECUTION: OAKLAND, CA

DATE SIGNED: 10 / 25 / 05

THE ABOVE INFORMATION MUST BE LEGIBLE FOR SCANNING

APPENDIX

Case #19-17394

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

John B. Freitas
Plaintiff-Appellant,

v.

Bank of America,
Defendant- Appellee

APPENDIX H

"TRUSTEE'S DEED UPON SALE"

On Appeal from the United States District Court
for the Northern District of California
William Alsup, District Judge, Presiding
Case # D.C. No. 3:19-cv-03347-WHA

Recording requested by:

When recorded mail to:

COMMUNITY FUND LLC
1032 E 14TH ST
SAN LEANDRO, CA 94577

Forward tax statements to the address given above



2019110110

05/11/2019 02:34 PM

OFFICIAL RECORDS OF ALAMEDA COUNTY

MELISSA WILK

RECORDING FEE:

COUNTY TAX:

\$2.00
477.40



2 PGS

TS No.: CA-14-610521-AL

Order No.: 14-0001632-01

Space above this line for recorder's use

26549 Cedar Blvd.
Newark, CA
94560

Trustee's Deed Upon Sale

A.P.N.: 092A-0985-021

THE UNDERSIGNED GRANTOR DECLARES:

The grantee herein WASNT the foreclosing beneficiary.

The amount of the unpaid debt together with costs was:

\$519,631.20

The amount paid by the grantee at the trustee sale was:

\$434,000.00

The documentary transfer tax is:

\$477.40

Said property is in the City of: NEWARK, County of ALAMEDA

QUALITY LOAN SERVICE CORPORATION as Trustee, (whereas so designated in the Deed of Trust hereunder more particularly described or as duly appointed Trustee) does hereby GRANT and CONVEY to:

COMMUNITY FUND LLC

(herein called Grantee) but without covenant or warranty, expressed or implied, all right title and interest conveyed to and now held by it as Trustee under the Deed of Trust in and to the property, situated in the county of ALAMEDA, State of California, described as follows:

PARCEL 1, AS SHOWN ON THAT PARCEL MAP FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY ALAMEDA, STATE OF CALIFORNIA, ON JULY 30, 1973, IN BOOK 79 OF MAPS, PAGE 97.

This conveyance is made in compliance with the terms and provisions of the Deed of Trust executed by JOHN B FREITAS, A/K/A JOHN B FREITAS, A MARRIED MAN AS HIS SOLE AND SEPARATE PROPERTY, as trustor, dated 10/14/2005, and recorded on 10/25/2005 as Instrument No. 2005459181 of Official Records in the office of the Recorder of ALAMEDA, California, under the authority and powers vested in the Trustee designated in the Deed of Trust or as the duly appointed trustee, default having occurred under the Deed of Trust pursuant to the Notice of Breach and Election to Sell under the Deed of Trust recorded on 4/29/2014, instrument no 2014-102128, of Official records. The Trustee of record at the relevant time having complied with all applicable statutory requirements of the State of California and performed all duties required by the Deed of Trust including sending a Notice of Default and Election to Sell within ten/thirty days after its recording and a Notice of Sale at least twenty days prior to the Sale Date by certified mail, postage pre-paid to each person entitled to notice in compliance with California Civil Code 2924b.

Default occurred as set forth in a Notice of Default and Election to Sell which was recorded in the office of the Recorder of said County.

All requirements of law regarding the mailing of copies of notices or the publication of a copy of the Notice of Default or the personal delivery of the copy of the Notice of Default and the posting and publication of copies of the Notice of Sale have been complied with.

Said property was sold by said Trustee at public auction on 6/3/2019 at the place named in the Notice of Sale, in the County of ALAMEDA, California, in which the property is situated. Grantee, being the highest bidder at such sale, became the purchaser of said property and paid therefore to said trustee the amount being \$434,000.00 in lawful money of the United States, or by the satisfaction, pro tanto, of the obligations then secured by said Deed of Trust.

QUALITY MAY BE CONSIDERED A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

TS No.: CA-14-610521-AL

Date: 06/10/19

QUALITY LOAN SERVICE CORPORATION

By: [Signature]
Damian Ramirez, Assistant Secretary

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of: California

County of: San Diego

On JUN 10 2019 before me, Katherine A. Davis a notary public, personally appeared Damian Ramirez, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

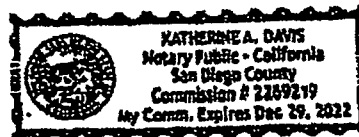
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(Seal)

Signature

[Signature]
Katherine A. Davis



APPENDIX

Case #19-17394

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

John B. Freitas

Plaintiff-Appellant,

v.

Bank of America,

Defendant- Appellee

APPENDIX I

"3-DAY NOTICE TO PAY OR QUIT"

On Appeal from the United States District Court
for the Northern District of California
William Alsup, District Judge, Presiding
Case # D.C. No. 3:19-cv-03347-WHA

DECLARATION OF PROOF OF SERVICE OF NOTICE TO OCCUPANT

On June 13, 2019, I served the Notice(s) herein to the following occupant(s):

(Date of Service of Notice)

John B. Freitas

(Insert name of occupant)

(Insert name of occupant)

- ☐ 3 Day Notice to Pay Rent or Quit
☐ 3 Day Notice to Perform Covenant or Quit
☐ 30 Day Notice of Termination of Tenancy
☐ 60 Day Notice of Termination of Tenancy
☒ Notice of Possession
☐ Other: _____

The Notice(s) set forth above were served at the following address: 36549 Cedar Boulevard
Newark Ca, 94560

The Notice(s) set forth above was served on behalf of the following property manager/owner:

Community Fund LLC

(Insert name of Property Manager/Owner)

The Notice(s) set forth above were served by:

X **PERSONAL DELIVERY:** I HANDED a copy of the Notice(s) to the following occupant(s):

John B. Freitas

(Insert name of occupant)

(Insert name of occupant)

SUBSTITUTED SERVICE BY LEAVING NOTICE & MAILING: I LEFT copies of the Notice(s) with a person of suitable age and discretion at the residence or usual place of business of the Occupant(s), said Occupant(s) being absent there from. Thereafter, on the same date, I also MAILED copies of the Notice(s) to the Occupant(s) by depositing a sealed envelope with First Class postage fully prepaid, in the United States Mail, addressed to the Occupant(s) at the Premises.

(Insert name of the person that you left the Notice with who is at least 18 years old or give the caption (e.g., car, room, wagon, etc.) if person refuses to give name)

X **POSTING & MAILING:** I served the Notice to the Occupant(s) by POSTING a copy of the Notice(s) in a conspicuous place on the Premises, as no person of suitable age or discretion could be found at the Premises and the business cannot be ascertained. Thereafter, on the same date, I also MAILED copies of the Notice(s) to the Occupant(s) by depositing a sealed envelope with First Class postage fully prepaid, in the United States Mail, addressed to the Occupant(s) at the Premises.

I declare under penalty of perjury under the laws of the State of California that at the time of service of the Notice(s) I was at least EIGHTEEN (18) years of age and that foregoing is true and correct. If called as a witness to testify thereto, I could do so competently.

Executed (signed) on 6/13/19 at Newark, California.

Name: BRIAN MCKENZIE

Brian McKenzie
Signature (to be signed only by the person actually serving notice)

EXC
RA08

APPENDIX

Case #19-17394

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

John B. Freitas

Plaintiff-Appellant,

v.

Bank of America,

Defendant- Appellee

APPENDIX J

DEED OF FULL RECONVEYANCE FILED ON JULY 1, 2016

On Appeal from the United States District Court
for the Northern District of California
William Alsup, District Judge, Presiding
Case # D.C. No. 3:19-cv-03347-WHA

Document Requested By and
When Recorded Return To:
Jessica Bondurant
ReconTrust Company, N.A.
4161 Piedmont Parkway
NC4-105-01-32
Greensboro, NC 27410
(800) 540-2684



2016166637

07/01/2016 09:01 AM

OFFICIAL RECORDS OF ALAMEDA COUNTY
STEVE MANNING
RECORDING FEE: 50.00



1 PG

Above Space for Recorder's Use

DOCID#08211380375493048

Commit Case# 559890

SUBSTITUTION OF TRUSTEE AND FULL RECONVEYANCE

WHEREAS, John B Freitas a married man as his sole and separate property is the Trustor, CTC Real Estate Services is the current trustee and Mortgage Electronic Registration Systems, Inc. is the current beneficiary ("Beneficiary") under that certain Deed of Trust dated 10/05/2005 and recorded on 10/12/2005, as instrument or Document No 2005441646, in Book N/A, Page N/A, of Official Records of the County of Alameda, State of California,

WHEREAS, the undersigned Beneficiary hereby substitutes a new trustee, ReconTrust Company, N.A. ("Trustee"), under said Deed of Trust, and Trustee does hereby reconvey, without warranty, to the person or persons legally entitled thereto, the estate now held by Trustee under the Deed of Trust.

APN: N/A

Dated: 6/27/16

Trustee:

ReconTrust Company, N. A.

Tina Owens

Tina Owens, Assistant Vice President

Beneficiary:

Mortgage Electronic Registration Systems, Inc.

Katrina Reynolds

Katrina Reynolds, Assistant Vice President

STATE OF North Carolina

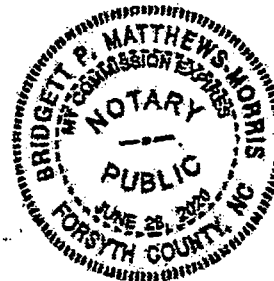
COUNTY OF Guilford

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document: Katrina Reynolds, Assistant Vice President of Mortgage Electronic Registration Systems, Inc. and Tina Owens, Assistant Vice President of ReconTrust Company, N. A.

Date: 6/27/16

Bridgett P. Matthews-Morris
Bridgett P. Matthews-Morris, Notary Public

John B Freitas
36549 Cedar Blvd
Newark CA 94560



APPENDIX

Case #19-17394

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

John B. Freitas
Plaintiff-Appellant,

v.

Bank of America,
Defendant- Appellee

APPENDIX K

“NOTICE OF TRUSTEE’S SALE, RECORDED MARCH 7TH 2019”

On Appeal from the United States District Court
for the Northern District of California
William Alsup, District Judge, Presiding
Case # D.C. No. 3:19-cv-03347-WHA

Stewart Title

Recording requested by:
Quality Loan Service Corp.

When recorded mail to:
Quality Loan Service Corporation
2763 Camino Del Rio South
San Diego, CA 92108



2019041830

03/07/2019 10:42 AM

OFFICIAL RECORDS OF ALAMEDA COUNTY
MELISSA WILK
RECORDING FEE: 102.00



2 PGS

A25A
2
PD

TS No. CA-14-610521-AL

Order No.: 14-0001632-08

SPACE ABOVE THIS LINE FOR RECORDER'S USE

NOTICE OF TRUSTEE'S SALE

NOTE: THERE IS A SUMMARY OF THE INFORMATION IN THIS DOCUMENT ATTACHED TO THE COPY PROVIDED TO THE MORTGAGOR OR TRUSTOR (Pursuant to Cal. Civ. Code 2923.3)

注: 本文件包含一个信息摘要

참고사항: 본 첨부 문서에 정보 요약서가 있습니다

NOTA: SE ADJUNTA UN RESUMEN DE LA INFORMACIÓN DE ESTE DOCUMENTO
TALA: MAYROONG BUOD NG IMPORMASYON SA DOKUMENTONG ITO NA NAKALAKIP
LƯU Ý: KÈM THEO ĐÂY LÀ BẢN TRÌNH BÀY TÓM LƯỢC VỀ THÔNG TIN TRONG TÀI LIỆU NÀY

YOU ARE IN DEFAULT UNDER A DEED OF TRUST DATED 10/14/2005. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

A public auction sale to the highest bidder for cash, cashier's check drawn on a state or national bank, check drawn by state or federal credit union, or a check drawn by a state or federal savings and loan association, or savings association, or savings bank specified in Section 5102 to the Financial Code and authorized to do business in this state, will be held by duly appointed trustee. The sale will be made, but without covenant or warranty, expressed or implied, regarding title, possession, or encumbrances, to pay the remaining principal sum of the note(s) secured by the Deed of Trust, with interest and late charges thereon, as provided in the note(s), advances, under the terms of the Deed of Trust, interest thereon, fees, charges and expenses of the Trustee for the total amount (at the time of the initial publication of the Notice of Sale) reasonably estimated to be set forth below. The amount may be greater on the day of sale.

BENEFICIARY MAY ELECT TO BID LESS THAN THE TOTAL AMOUNT DUE.

Trustor(s): JOHN B FREITAS, A/K/A JOHN B FREITAS, A MARRIED MAN AS HIS SOLE AND SEPARATE PROPERTY

Recorded: 10/25/2005 as Instrument No. 2005459181 of Official Records in the office of the Recorder of ALAMEDA County, California;

Date of Sale: 4/2/2019 at 12:00PM

Place of Sale: At the Fallon Street emergency exit to the Alameda County Courthouse, located at 1225 Fallon St., Oakland, CA 94612

Amount of unpaid balance and other charges: \$515,345.74

The purported property address is: 36549 CEDAR-BLVD, NEWARK, CA 94560

Assessor's Parcel No.: 092A-0985-021

NOTICE TO POTENTIAL BIDDERS: If you are considering bidding on this property lien, you should understand that there are risks involved in bidding at a trustee auction. You will be bidding on a lien, not on the property itself. Placing the highest bid at a trustee auction does not automatically entitle you to free and clear ownership of the property. You should also be aware that the lien being auctioned off may be a junior lien. If you are the highest bidder at the auction, you are or may be responsible for paying off all liens senior to the lien being auctioned off, before you can receive clear title to the property. You are encouraged to investigate the existence, priority, and size of outstanding liens that may exist on this property by contacting the county recorder's office or a title insurance company, either of which may charge you a fee for this information. If you consult either of these resources, you should be aware that the same lender may hold more than one mortgage or deed of trust on the property.

NOTICE TO PROPERTY OWNER: The sale date shown on this notice of sale may be postponed one or more times by the mortgagee, beneficiary, trustee, or a court, pursuant to Section 2924g of the California Civil Code. The law requires that information about trustee sale postponements be made available to you and to the public, as a courtesy to those not present at the sale. If you wish to learn whether your sale date has been postponed, and, if applicable, the rescheduled time and date for the sale of this property, you may call 916-939-0772 for information regarding the trustee's sale or visit this Internet Web site <http://www.qualityloan.com>, using the file number assigned to this foreclosure by the Trustee: CA-14-610521-AL. Information about postponements that are very short in duration or that occur close in time to the scheduled sale may not immediately be reflected in the telephone information or on the Internet Web site. The best way to verify postponement information is to attend the scheduled sale.

The undersigned Trustee disclaims any liability for any incorrectness of the property address or other common designation, if any, shown herein. If no street address or other common designation is shown, directions to the location of the property may be obtained by sending a written request to the beneficiary within 10 days of the date of first publication of this Notice of Sale.

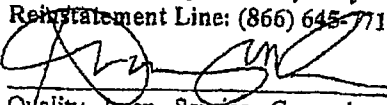
If the sale is set aside for any reason, including if the Trustee is unable to convey title, the Purchaser at the sale shall be entitled only to a return of the monies paid to the Trustee. This shall be the Purchaser's sole and exclusive remedy. The purchaser shall have no further recourse against the Trustor, the Trustee, the Beneficiary, the Beneficiary's Agent, or the Beneficiary's Attorney.

If you have previously been discharged through bankruptcy, you may have been released of personal liability for this loan in which case this letter is intended to exercise the note holders right's against the real property only.

QUALITY MAY BE CONSIDERED A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

Date: 3/5/2019

Quality Loan Service Corporation
2763 Camino Del Rio South
San Diego, CA 92108
619-645-7711 For NON SALE information only
Sale Line: 916-939-0772
Or Login to: <http://www.qualityloan.com>
Reinstatement Line: (866) 645-7711 Ext 5318


Quality Loan Service Corp. by: Ronald Alonzo, Assistant Secretary

APPENDIX

Case #19-17394

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

John B. Freitas
Plaintiff-Appellant,

v.

Bank of America,
Defendant- Appellee

APPENDIX L

LETTER FROM COMMISSION ON JUDICIAL PERFORMANCE

On Appeal from the United States District Court
for the Northern District of California
William Alsup, District Judge, Presiding
Case # D.C. No. 3:19-cv-03347-WHA



State of California
Commission on Judicial Performance
455 Golden Gate Avenue, Suite 14400
San Francisco, CA 94102-3660
(415) 557-1200
Fax (415) 557-1266
Website: <http://cjp.ca.gov>

January 26, 2021

John B. Freitas
36937 Cherry Street
Newark, CA 94560

Dear John B. Freitas:

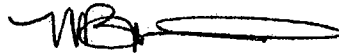
This letter is to acknowledge receipt of your recent complaint against a California judge(s). We appreciate your time and effort in bringing this matter to the commission's attention. We are presently reviewing this information and, if further information is needed, you will be contacted. You will be advised in writing, at a later date, of the commission's action in this matter. To give you some information about the process, each complaint about a judge is voted upon by the commission. When a complaint states facts which could be misconduct, if the facts are true and there is not another explanation for what happened, the commission typically opens an investigation. The commission's staff will interview witnesses, review documents or files and conduct other investigation. If there is sufficient evidence supporting the complaint, the judge will be contacted and asked to respond to the allegations. The commission then reviews the available evidence, and the judge's response if the judge was contacted, to make a determination whether misconduct has occurred. Misconduct must be established by clear and convincing evidence, a higher standard than is required in civil cases but lower than in criminal cases. If the evidence does not support a finding of misconduct, the commission will close the case. The commission may also close the case if the misconduct was relatively minor and the judge has acknowledged the problem and taken steps to prevent it from happening again. If the evidence supports a finding of misconduct and the commission determines that discipline may be appropriate, the commission may proceed to impose discipline.

It may also be helpful to explain that the Commission on Judicial Performance is not a court. It does not have the authority to reverse a judge's decision, move your case to another department or court, disqualify a judge or otherwise get involved in your case. The commission's role is limited to reviewing allegations of judicial misconduct. A judge's legal rulings and discretionary decision-making, without more, are not a basis for review by the commission. Even if a judge's decision is later determined by an appellate

court to be legally incorrect, that by itself is not a violation of the Code of Ethics and is not misconduct. A judge's legal error might be a basis for investigation by this commission if there is sufficient evidence of bad faith, bias, abuse of authority, disregard for fundamental rights, intentional disregard of the law or any purpose other than the faithful discharge of judicial duty.

Lastly, our office is not able to provide legal advice. If you wish to determine what legal avenues are available to you, you might consider contacting an attorney or legal services provider to see if they can help you.

Very truly yours,

A handwritten signature in black ink, appearing to read 'NB', followed by a long horizontal flourish.

Nicole M. Benavidez
Secretary to Staff Counsel

APPENDIX

Case #19-17394

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

John B. Freitas
Plaintiff-Appellant,

v.

Bank of America,
Defendant- Appellee

APPENDIX M

DEED OF TRUST RECORDED OCTOBER 12TH 2005

On Appeal from the United States District Court
for the Northern District of California
William Alsup, District Judge, Presiding
Case # D.C. No. 3:19-cv-03347-WHA

Recording Requested By:
J. ARIAS

Lender Service - PLD
Fidelity National Financial

After Recording Return To:
COUNTRYWIDE HOME LOANS, INC.

MS SV-79 DOCUMENT PROCESSING
P.O.Box 10423
Van Nuys, CA 91410-0423
Prepared By:
BARRINGTON TAYLOR

51692290

09 2A - 0985-021



2005441646

10/12/2005 11:16 AM

OFFICIAL RECORDS OF ALAMEDA COUNTY
PATRICK E. CONNELL
RECORDING FEE: \$2.00



13 PGS

[Space Above This Line For Recording Data]

113803754

{Escrow/Closing #}

00011380375410005

{Doc ID #}

DEED OF TRUST AND ASSIGNMENT OF RENTS

MIN 1001337-0000945117-3

This Deed of Trust secures an obligation which calls for payment of interest at a variable interest rate.
THIS DEED OF TRUST is made this 5th day of OCTOBER, 2005, between
JOHN B FREITAS A MARRIED MAN AS HIS SOLE AND SEPARATE PROPERTY

whose address is,
36549 CEDAR BLVD, NEWARK, CA 94560

herein called "Trustor,"

CTC REAL ESTATE SERVICES

400 COUNTRYWIDE WAY, MSN SV-88, SIMI VALLEY, CA 93065

herein called "Trustee," and MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., ("MERS")

a Delaware corporation with an address of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

MERS is the "Beneficiary" under this Deed of Trust and is acting solely as a nominee for
Countrywide Bank, N.A.

("Lender" or "you") and its successors and assigns, with an address of

1199 North Fairfax St. Ste. 500, Alexandria, VA 22314

Trustor irrevocably grants, transfers and assigns to Trustee, in trust and with power of sale, all of the real
property in the City or Town of NEWARK, County of

ALAMEDA, State of California, having the street address of
36549 CEDAR BLVD, NEWARK, CA 94560-2532

* MERS HELOC - CA Deed of Trust
1D988-CA (02/04)(d)

Page 1 of 10

Initials: 



* 2 3 9 9 1 *



* 1 1 3 8 0 3 7 5 4 0 0 0 0 1 D 9 8 8 *

and more specifically described as:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

Parcel ID Number: 092A0985021

together with all improvements now or hereafter erected on the property, and all easements, rights, appurtenances, rents (subject however to the rights and authorities given herein to Lender to collect and apply such rents), royalties, mineral, oil and gas rights and profits, water, water rights, and water stock, and all fixtures now or hereafter attached to the property, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the property covered by this Deed of Trust; and all of the foregoing, together with said property (or the leasehold estate if this Deed of Trust is on a leasehold) are herein referred to as the "Property."

TRUSTOR UNDERSTANDS and agrees that MERS is a separate corporation acting solely as nominee for Lender and Lender's successors and assigns, and holds only legal title to the interests granted by Trustor in this Deed of Trust, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property, and to take any action required of Lender including, but not limited to, releasing or canceling this Deed of Trust.

1. THIS DEED OF TRUST SECURES:

a. All of the obligations of Trustor in favor of Lender or order under the terms of a revolving credit agreement dated OCTOBER 5, 2005, herein called Agreement. The Agreement provides, among other things, for the payment of all sums advanced by Lender from time to time pursuant to the Agreement and for the payment of interest. The maximum principal obligation under the Agreement to be secured by this Deed of Trust at any one time is THREE HUNDRED FORTY NINE THOUSAND EIGHT HUNDRED FORTY and 00/100 Dollars (\$ 349,840.00) unless Lender, with Trustor's written consent, hereafter increases this amount. Advances made by Lender to protect the security of this Deed of Trust or to preserve the Property shall not be subject to the limitation of the preceding sentence.

The security of this Deed of Trust shall not be affected by the extension, renewal or modification from time to time of the obligations, instruments or agreements described above.

b. Payment of any and all obligations and liabilities, whatsoever, whether primary, secondary, direct, indirect, fixed or contingent, whether now or hereafter due from Trustor (or any successor in interest to Trustor) whether created directly or acquired by assignment if the document evidencing such obligation or liability or any other writing signed by Trustor (or any successor in interest to Trustor) specifically provides that said obligation or liability is secured by this Deed of Trust.

c. Performance of each agreement of Trustor herein contained or contained in any other agreement, instrument or other writing to which Trustor is a party if the same is written in connection with any of the foregoing.

d. Payment of all sums to be expended by the Lender or Trustee pursuant to the terms hereof.

2. TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR AGREES:

a. To keep the Property in good condition and repair; not to remove or demolish any building or improvement thereon; to complete or cause to be completed any construction of buildings or other improvements thereon which are financed in whole or in part by the indebtedness secured hereby and to restore promptly and in good and workmanlike manner any building or other improvement which may be damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws affecting the Property or requiring any alteration or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said Property in violation of law; to cultivate, irrigate, weed, fertilize, fumigate, spray, prune and do all other acts which from the character or use of the Property may be reasonably necessary, the specific enumerations herein not excluding the general.

b. To provide, maintain and deliver to Lender fire and other insurance on the Property satisfactory to and with loss payable to Lender. The amount collected under any fire or other insurance policy may be applied by Lender upon indebtedness secured hereby and in such order as Lender may determine, or at option of Lender, the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default hereunder or invalidate any act done pursuant to such notice.

c. To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Lender or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Lender or Trustee may appear, and in any suit brought by Lender to foreclose this Deed of Trust. It is agreed that the Lender shall be subrogated to the claims and liens of all parties whose claims or liens are discharged or paid with the proceeds of the Agreement secured hereby.

d. To pay at least ten days before delinquency all taxes and assessments affecting the Property, including, without limitation, assessment on appurtenant water stock, all encumbrances, charges and liens on the Property or any part thereof, and all costs, fees and expenses of this trust.

e. That should Trustor fail to make any payment or do any act as herein provided, then Lender or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may:

(1) Make or do the same in such manner and to such extent as either may deem necessary or appropriate to protect the security hereof, Lender or Trustee being authorized to enter upon the Property for such purposes.

(2) Appear in and defend any action or proceeding purporting to affect the security hereof or the rights or power of Lender or Trustee.

(3) Pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior and superior hereto.

(4) In exercising any such powers, pay necessary expenses, employ counsel and pay his or her reasonable fees.

f. To pay immediately and without demand all sums so expended by Lender or Trustee, with interest from date of expenditure at the maximum rate allowed by law in effect at the date hereof or at the option of Lender, such sums may be added to the principal balance of any indebtedness secured hereby and shall bear the highest rate of interest as any such indebtedness.

g. To pay for any statement provided for by the law in effect on the date hereof regarding the obligation secured hereby in the amount demanded by the Lender but not to exceed the maximum allowed by law at the time the statement is demanded.

3. IT IS FURTHER AGREED THAT:

a. Any award of damages in connection with any condemnation for public use of or injury to the Property or any part thereof is hereby assigned and shall be paid to Lender who may apply or release such monies received by it in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

b. By accepting payment of any sum secured hereby after its due date, or after the filing of notice of default and of election to sell, Lender shall not waive its right to require prompt payment when due of all other sums so secured, or to declare default for failure so to pay, or to proceed with the sale under any such notice of default and of election to sell, for any unpaid balance of said indebtedness. If Lender holds any additional security for any obligation secured hereby, it may enforce the sale thereof at its option, either before, contemporaneously with, or after the sale is made hereunder, and on any default of Trustor, Lender may, at its option, offset against any indebtedness owing by it to Trustor, the whole or any part of the indebtedness secured hereby.

c. Without affecting the liability of any person, including, without limitation, Trustor, for the payment of any indebtedness secured hereby, or the lien of this Deed of Trust on the remainder of the Property for the full amount of any indebtedness unpaid, Lender and Trustee are respectively empowered as follows:

(1) Lender may from time to time and without notice (a) release any person liable for the payment of any of the indebtedness, (b) extend the time or otherwise alter the terms of payment of any of the indebtedness, (c) accept additional security therefor of any kind, including Deeds of Trust or mortgages, (d) alter, substitute or release any of the Property securing the indebtedness.

(2) Trustee may, at any time, and from time to time, upon the written request of Lender (a) consent to the making of any map or plat of the Property, (b) join in granting any easement or creating any restriction thereon, (c) join in any subordination or other agreement affecting this Deed of Trust or the lien or charge thereof or, (d) reconvey, without any warranty, all or any part of the Property.

d. Upon (a) written request of Lender or (b) performance of all obligations of the Trustor hereunder and under each and every note, guarantee, Agreement or other writing evidencing the indebtedness secured hereby, and upon surrender of this Deed of Trust to Trustee for cancellation and retention and upon payment of its fees, Trustee shall reconvey, without warranty, the Property then held hereunder. The recital in such reconveyance of any matters of facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto." Five years after issuance of such reconveyance, Trustee may destroy said note, guarantee, Agreement or other evidence of indebtedness and this Deed of Trust (unless directed in such request to retain them).

e. Trustor hereby gives to and confers upon Lender the right, power and authority during the continuance of these trusts to collect the rents, issues and profits of the Property and of any personal property located thereon, and hereby absolutely and unconditionally assigns all such rents, issues and profits to Lender; provided, however, that Lender hereby consents to the collection and retention of such rents, issues and profits as they accrue and become payable only if Trustor is not, at such time, in default with respect to payment of any indebtedness secured hereby or in the performance of any agreement hereunder. Upon any such default, Lender may at any time, without notice, either in person, by agent, or by a receiver to be appointed by a court, without regard to the adequacy of any security for the indebtedness hereby secured and without limiting the generality of Section 2.e.(1), above, enter upon and take possession of the Property or any part thereof, and in its own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Lender may determine; also perform such acts of repair, nurturing, cultivation, irrigation, weeding, fertilizing, fumigation, spraying, pruning or protection, as may be necessary or proper to conserve the value of the Property or any trees, planting or crops growing thereon; also lease the same or any part thereof for such rental, term, and upon such conditions as its judgment may dictate; also prepare for harvest, sever, remove, and sell any crops that may be growing upon the premises, and apply the net proceeds thereof to the indebtedness secured hereby. The entering upon and taking possession of the Property and performance or failure to perform any of the acts described in the preceding sentence, the collection of or failure to collect such rents, issues and profits, and the application thereof as aforesaid, shall not waive or cure any default or notice of default hereunder, or invalidate any act done pursuant to such notice and shall not constitute or otherwise result in any assumption by or liability of Lender for maintenance, depreciation, misuse or risk of loss other than for damage or loss to the Property due to Lender's gross negligence or intentional torts. Trustor also assigns to Trustee, as further security for the performance of the obligations secured hereby, all prepaid rents and all monies which may have been or may hereafter be deposited with said Trustor by any lessee of the premises herein described, to secure the payment of any rent, and upon default in the performance of any of the provisions hereof, Trustor agrees to deliver such rents and deposits to the Trustee.

f. Upon default by Trustor in the performance of any payment or other obligation secured hereby or in the performance of any agreement hereunder, or if, whether voluntarily or involuntarily, there is a sale or transfer of all or any part of (i) the Property or an interest therein, or (ii) a beneficial interest in Trustor and Trustor is not a natural person, or if Trustor ceases to use the Property as Trustor's primary residence, Lender may declare all sums secured hereby immediately due without notice or demand and no waiver of this right shall be effective unless in writing and signed by Lender.

g. Waiver of a right granted to Lender hereunder as to one transaction or occurrence shall not be deemed to be a waiver of the right as to any subsequent transaction or occurrence. Lender may rescind any notice before Trustee's sale by executing a notice of rescission and recording the same. The recordation of such notice shall constitute also a cancellation of any prior declaration of default and demand for sale, and of any acceleration of maturity of indebtedness affected by any prior declaration or notice of default. The exercise by Lender of the right of rescission shall not constitute a waiver of any default then existing or subsequently occurring, nor impair the right of the Lender to execute other declarations of default and demand for sale, or notices of default and of election to cause the Property to be sold, nor otherwise affect the note or deed of trust, or any of the rights, obligations or remedies of the Lender or Trustee hereunder.

h. At least three months or any lesser period required by law having elapsed between the recordation of the notice of default and the date of sale, Trustee, having first given notice of sale as then required by law, shall sell the Property at the time and place of sale fixed by it in the notice of sale, either as a whole or in separate parcels, and in such order as the Trustee may determine, at public auction to the highest bidder for cash, in lawful money of the United States of America, payable at the time of sale except as otherwise permitted by law. Trustee may postpone sale of all or any portion of the Property by public announcement at the time of sale, and from time to time thereafter may postpone the sale by public announcement, all as permitted by law. Trustee shall deliver to the purchaser its deed conveying the Property so sold, but without any covenant or warranty, expressed or implied. The recital in any such deed of any matters or facts, stated either specifically or in general terms, or as conclusions of law or fact, shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee or Lender, may purchase at the sale. After deducting all costs, fees and expenses of Trustee and of this trust, including costs of evidence of title in connection with the sale, the Trustee shall apply the proceeds of this sale to the payment of all sums then secured hereby, in such order and manner as may be required by the Lender; the remainder, if any, to be paid to the person or persons legally entitled thereto. If Lender shall elect to bring suit to foreclose this Deed of Trust in the manner and subject to the provisions, rights and remedies relating to the foreclosure of a mortgage, Lender shall be entitled to reasonable attorney's fees and litigation costs.

i. Lender, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Lender and duly acknowledged and recorded in the office of the recorder of the county or counties where said Property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Lender hereunder, the book and page where this Deed of Trust is recorded and the name and address of the new trustee.

j. This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Lender shall mean the owner and holder, including, without limitation, pledgees, of the note, guarantee, Agreement, or other evidence of indebtedness secured hereby, whether or not named as Lender herein. In this Deed of Trust, whenever the context so requires, the singular number includes the plural.

k. Trustee accepts this trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Lender or Trustee shall be a party unless brought by Trustee.

l. If Trustor or any successor in interest to Trustor sells, transfers or encumbers any interest in the Property, whether voluntarily or involuntarily, or if a beneficial interest in Trustor is sold or transferred, voluntarily or involuntarily, and Trustor is not a natural person: (a) the transferor and the transferee shall each immediately give written notice of said transfer to the Lender, at its address designated on the first page of this Deed of Trust; (b) if this Deed of Trust secures Trustor's obligation under an Agreement as defined herein, all credit extended by Lender under the Agreement, whether before or after the Property is transferred, shall be secured under this Deed of Trust as if no transfer had occurred except for credit extended by Lender more than five days after it has received the written notices required by this paragraph.

m. The pleading of any statute of limitations as a defense to any and all obligations secured by this Deed of Trust is hereby waived to the full extent permitted by law.

4. WITH REGARD TO ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES, TRUSTOR AGREES:

a. As used in this Paragraph 4:

(1) "Environmental Law" means all federal, state and local law concerning the public health, safety or welfare, environment or a Hazardous Substance, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Sec. 9601 et seq., Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901 et seq., Toxic Substances Control Act, 15 U.S.C. Sec. 2601 et seq., Hazardous Materials Transportation Act, 49 U.S.C. Sec. 1801 et seq., Clean Water Act and Water Quality Act of 1987, 33 U.S.C. Sec. 1251 et seq., Safe Drinking Water Act, 41 U.S.C. Sec. 300f et seq., Clean Air Act, 42 U.S.C. Sec. 7901 et seq., Carpenter-Presley-Tanner Hazardous Account Act, Cal.Health & Safety Code Sec. 25300 et seq., Hazardous Waste Control Law, Cal.Health & Safety Code Sec. 25100 et seq., Porter-Cologne Water Quality Control Act, Cal.Water Code Sec. 1300 et seq., Hazardous Waste Disposal Land Use Law, Cal.Health & Safety Code Sec. 25220 et seq., Safe Drinking Water and Toxic Enforcement Act of 1986, Cal.Health & Safety Code Sec. 25249.5 et seq., Hazardous Substances Underground Storage Tank Law, Cal.Health & Safety Code Sec. 25280 et seq., Air Resources Law, Cal.Health & Safety Code Sec. 3900 et seq., Hazardous Materials Release Response Plans and Inventory, Cal.Health & Safety Code Sec. 25500 et seq., and Toxic Pits Cleanup Act of 1984, Cal.Health & Safety Code Sec. 25208 et seq.

(2) "Hazardous Substance" means any substance which has characteristics of ignitability, corrosivity, toxicity, reactivity or radioactivity or other characteristics which render it dangerous or potentially dangerous to public health, safety or welfare or the environment, including without limitation, (i) petroleum or any fraction or other byproduct thereof, (ii) asbestos, (iii) lead, (iv) cyanide, (v) polychlorinated biphenyls, (vi) urea formaldehyde and (vii) anything defined as a "hazardous material," "toxic substance," "hazardous substance," "hazardous waste" or "waste" under any Environmental Law, including without limitation, "hazardous substance" as defined in Cal.Health & Safety Code Sec. 25316 and "waste" and "hazardous substance" as defined in Cal.Water Code Sec. 13050(d) and Sec. 13050(p)(l), respectively. The term is intended by Trustor and Lender to be interpreted in its most comprehensive and cumulative sense.

b. Trustor represents and warrants that except as disclosed to and acknowledged in writing by Lender before the date of this Deed of Trust:

(1) No Hazardous Substance has been located, used, manufactured, generated, treated, handled, stored, spilled, disposed of, discharged or released by any person on, under or about the Property.

(2) Trustor has no knowledge of or reason to believe that there is any pending or threatened investigation, assessment, claim, demand, action or proceeding of any kind relating to (i) any alleged or actual Hazardous Substance located under or about the Property or (ii) alleged or actual violation or noncompliance by Trustor or any tenant of Trustor with regard to any Environmental Law involving the Property.

(3) Neither Trustor nor any tenant of Trustor is required by any Environmental Law to obtain or maintain any permit, license, financial responsibility certificate or other approval as a condition to its business operations or in connection with its use, development or maintenance of the Property.

c. Trustor represents and warrants that Trustor and every tenant of Trustor have been, are and will remain in full compliance with any Environmental Law applicable to its business operations and its use, development or maintenance of the Property.

d. Trustor agrees to permit, or cause any tenant of Trustor to permit, Lender to enter and inspect the Property at any reasonable time for purposes of determining, as Lender deems necessary or desirable: (i) the existence, location and nature of any Hazardous Substance on, under or about the Property, (ii) the existence, location, nature, magnitude and spread of any Hazardous Substance that has been spilled, disposed of, discharged or released on, under or about the Property or (iii) whether or not Trustor and any tenant of Trustor are in compliance with applicable Environmental Law. If Trustor or its tenant fails to comply fully with the terms hereof, Lender may obtain affirmative injunctive relief therefor.

e. Trustor agrees to indemnify and hold Lender and its successors or assigns harmless from and against all losses, claims, demands, liabilities, damages, cleanup, response and remediation costs, penalties and expenses, including, without limitation, all costs of litigation and attorneys' fees, which Lender and its successors and assigns may directly or indirectly sustain or suffer as a consequence of any inaccuracy or breach of any representation, warranty or promise made in this Deed of Trust in connection with any Hazardous Substance or Environmental Law. Notwithstanding any of the language in this Deed of Trust to the contrary, this indemnity covers claims asserted after all the indebtedness secured by this Deed of Trust has been paid and discharged, whether or not this Deed of Trust has also been reconveyed to Trustor. The only exclusions hereto may relate to claims arising out of the affirmative acts of Lender or of a third party after Trustor's interest in the Property has terminated.

f. The provisions of this Paragraph 4 shall not be affected by the acquisition by Lender or its successors or assigns of any ownership or other interest in the Property beyond Lender's security interest in the Property created under this Deed of Trust, whether or not such acquisition is pursuant to the foreclosure of this Deed of Trust or a merger of the interest of the Lender or its successors and assigns in the Property.

5. **ADDITIONAL PROVISIONS:**

a. The execution of this Deed of Trust by any person who has no present interest in the Property shall not be deemed to indicate that such an interest presently exists. Rather, execution of this Deed of Trust by such a person shall constitute such person's agreement that if such person hereafter acquires an interest in the Property, such interest shall be subject to the interest granted hereunder.

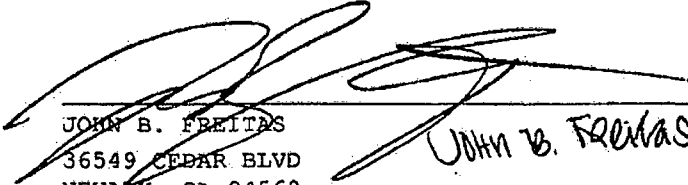
b. The execution of this Deed of Trust by any person who has a present interest in the Property shall not in itself be deemed to indicate that such person is liable to Lender for any obligation described in Section 1., above. Any personal liability of such person to Lender shall be determined on an independent basis (such as execution of the document or documents evidencing the obligation described in Section 1., above). Execution of this Deed of Trust by any such person shall nevertheless indicate that such person's interest in the Property shall be subject to the interest granted hereunder.

DOC ID #: 00011380375410005

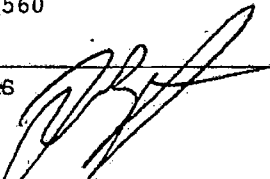
The undersigned Trustors request that a copy of any notice of default, and of any notice of sale hereunder, be mailed to their respective addresses set forth below.

By signing below, Trustor agrees to all the terms and conditions of this Deed of Trust.

Mailing Address For Notices



JOHN B. FREITAS
36549 CEDAR BLVD
NEWARK, CA 94560



~~FATIMA FREITAS~~

State of California

County of Alameda

On Oct. 5, 2005

, before me

Joellen K. King, Notary Public

, personally appeared

John B. Freitas

~~, personally known to me~~ (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Joellen K. King

