

No. _____

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

John B. Freitas

Petitioner

v.

Judge Noel Wise, et. al.

Respondents

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

Case #22-16314

APPENDIX "A"

**FILED CONCURRENTLY WITH
PETITIONER'S PETITION FOR WRIT OF CERTIORARI**

On Appeal from the United States District Court
For Northern California

James Donato, District Judge, Presiding
Case # D.C. No. 3:21-cv-08176-JD

John B. Freitas, Petitioner
Phone: 510-377-8777

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

DEC 12 2022

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

JOHN B. FREITAS,

Plaintiff-Appellant,

v.

NOEL WISE, Superior Court of the State of
California, Alameda County; et al.,

Defendants-Appellees.

No. 22-16314

D.C. No. 3:21-cv-08176-JD
Northern District of California,
San Francisco

ORDER

Before: WALLACE, TALLMAN, and BYBEE, Circuit Judges.

The district court has certified that this appeal is frivolous and has revoked appellant's in forma pauperis status. *See* 28 U.S.C. § 1915(a). On September 6, 2022, this court ordered appellant to explain in writing why this appeal should not be dismissed as frivolous. *See* 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious).

Upon a review of the record and the response to the court's September 6, 2022 order, we conclude this appeal is frivolous. We therefore deny appellant's motion to proceed in forma pauperis (Docket Entry No. 6) and dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2).

No further filings will be entertained in this closed case.

DISMISSED.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

SEP 6 2022

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

JOHN B. FREITAS,

Plaintiff-Appellant,

v.

NOEL WISE, Superior Court of the State of
California, Alameda County; et al.,

Defendants-Appellees.

No. 22-16314

D.C. No. 3:21-cv-08176-JD
Northern District of California,
San Francisco

ORDER

A review of the district court's docket reflects that the district court has certified that this appeal is frivolous and has revoked appellant's in forma pauperis status. *See* 28 U.S.C. § 1915(a). This court may dismiss a case at any time, if the court determines the case is frivolous. *See* 28 U.S.C. § 1915(e)(2).

Within 35 days after the date of this order, appellant must:

- (1) file a motion to dismiss this appeal, *see* Fed. R. App. P. 42(b), or
- (2) file a statement explaining why the appeal is not frivolous and should go forward.

If appellant files a statement that the appeal should go forward, appellant also must:

- (1) file in this court a motion to proceed in forma pauperis, OR

(2) pay to the district court \$505.00 for the filing and docketing fees for this appeal AND file in this court proof that the \$505.00 was paid.

If appellant does not respond to this order, the Clerk will dismiss this appeal for failure to prosecute, without further notice. *See* 9th Cir. R. 42-1. If appellant files a motion to dismiss the appeal, the Clerk will dismiss this appeal, pursuant to Federal Rule of Appellate Procedure 42(b). If appellant submits any response to this order other than a motion to dismiss the appeal, the court may dismiss this appeal as frivolous, without further notice.

The briefing schedule for this appeal is stayed.

The Clerk shall serve on appellant: (1) a form motion to voluntarily dismiss the appeal, (2) a form statement that the appeal should go forward, and (3) a Form 4 financial affidavit. Appellant may use the enclosed forms for any motion to dismiss the appeal, statement that the appeal should go forward, and/or motion to proceed in forma pauperis.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Joseph Williams
Deputy Clerk
Ninth Circuit Rule 27-7

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Case #22-16314

APPENDIX "B"
FILED CONCURRENTLY WITH
PETITIONER'S PETITION FOR WRIT OF CERTIORARI

On Appeal from the United States District Court
For Northern California

James Donato, District Judge, Presiding
Case # D.C. No. 3:21-cv-08176-JD

John B. Freitas, Petitioner
Phone: 510-377-8777

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHN B. FREITAS,
Plaintiff,

v.

NOEL WISE, et al.,
Defendants.

Case No. 21-cv-08176-JD

ORDER

In a prior order, the Court granted IFP status to pro se plaintiff Freitas, and dismissed the complaint under 28 U.S.C. § 1915, with leave to amend. Dkt. No. 11. Freitas filed an amended complaint, which runs to over 600 pages with attachments. Dkt. No. 12. To the limited extent that the amended complaint is comprehensible, it repeats the same allegations under 42 U.S.C. § 1983 against a California Superior Court judge, Alameda County, and the State of California, that were dismissed in the prior order. Consequently, Counts I through IV of the amended complaint are dismissed with prejudice.

The RICO claim in Count V under 18 U.S.C. § 1962 is also dismissed. A plausible civil RICO claim must satisfy the heightened pleading standards of Federal Rule of Civil Procedure 9(b) and a variety of specific pleading allegations under the statute with respect to the alleged criminal enterprise, predicate acts, injury, and causation. *See Edwards v. Marin Park, Inc.*, 356 F.3d 1058, 1065-66 (9th Cir. 2004); *Schreiber Distrib. Co. v. Serv-Well Furniture Co.*, 806 F.2d 1393, 1400-01 (9th Cir. 1986); *United Bhd. of Carpenters & Joiners of Am. v. Bldg. & Const. Trades Dep't, AFL-CIO*, 770 F.3d 834, 837 (9th Cir. 2014) (stating elements of a civil RICO claim). The amended complaint does not come close to alleging a cognizable RICO claim against defendants. Because further amendment is highly unlikely to result in a plausible RICO claim,

Count V is dismissed with prejudice.

The request for judicial notice, Dkt. No. 13, is denied. The case is closed, and no further filings will be accepted without the Court's prior approval.

IT IS SO ORDERED.

Dated: August 11, 2022



JAMES DONATO
United States District Judge

United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHN B. FREITAS,
Plaintiff,

v.

NOEL WISE, et al.,
Defendants.

Case No. 21-cv-08176-JD

ORDER

Re: Dkt. Nos. 1, 3, 8, 9, 10

Pro se plaintiff John Freitas filed a complaint and an application for leave to proceed in forma pauperis (IFP). Dkt. Nos. 1, 3. The IFP application is granted, and the complaint is dismissed with leave to amend.

IFP requests are evaluated under 28 U.S.C. § 1915. The first question is whether the plaintiff's financial status excuses payment of the court's filing fees. The answer is yes. Freitas states that he is unemployed, and pays monthly expenses of \$800 out of a monthly Social Security benefit of \$1,000, which is his sole source of income. Dkt. No. 3. Freitas meets the financial qualifications for IFP status.

The next question is whether the complaint is sufficient to stand, and the answer is no. The Court may "at any time" dismiss an IFP complaint that fails to state a claim on which relief may be granted. 28 U.S.C. § 1915(e)(3)(B). The standard is the same as under Federal Rule of Civil Procedure 12(b)(6). *Watson v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012). As a pro se plaintiff, Freitas "gets a liberal construction of his complaint and the benefit of any doubts, but he still must satisfy the requirements of Rule 8 and state facts sufficient to allege a plausible claim." *Nordin v. Scott*, No. 3:21-CV-04717-JD, 2021 WL 4710697, at *1 (N.D. Cal. Oct. 8, 2021).

1 The complaint does not satisfy these requirements. Freitas sued a California superior court
2 judge, Alameda County, and the State of California, for damages and injunctive relief under
3 42 U.S.C. § 1983 for alleged due process and equal protection claims, among others. Dkt. No. 1.
4 The claims appear to arise in connection with a residential foreclosure matter, but the oversize
5 complaint, which is more than 100 pages in length with attachments, is not entirely clear.

6 The state court judge is absolutely immune from suit for judicial actions undertaken in the
7 course of her official duties in connection with a case; unless the judge acted outside her judicial
8 capacity or in the complete absence of jurisdiction. *Mireles v. Waco*, 502 U.S. 9, 11-12 (1991)
9 (*per curiam*); *Nordin*, 2021 WL 4710697, at *1 (citing *Dennis v. Sparks*, 449 U.S. 24, 28 (1980)).
10 This is true “however erroneous the act may have been,” “however injurious in its consequences it
11 may have proved to the plaintiff,” and irrespective of the judge’s motivation. *Cleavinger v.*
12 *Saxner*, 474 U.S. 193, 199-200 (1985) (internal quotations marks omitted). The Court emphasizes
13 that nothing in the record even remotely suggests that the state court judge acted in such a fashion.
14 The observation is intended purely to underscore the breadth of judicial immunity. In addition,
15 judges are specifically immune to damages claims, *see Wyatt v. Cole*, 504 U.S. 158, 164-65
16 (1992), and Section 1983 permits an injunction in extremely limited circumstances not present
17 here, *see Wolfe v. Strankman*, 392 F.3d 358, 366 (9th Cir. 2004). To the extent the complaint can
18 be apprehended, the state court judge here performed well within the scope of her judicial duties,
19 and so immunity applies.

20 For the State of California, “a State is not a ‘person’ within the meaning of § 1983.” *Will*
21 *v. Michigan Dep’t of State Police*, 491 U.S. 58, 65 (1989).

22 For Alameda County, the complaint does not allege facts plausibly demonstrating a pattern
23 or practice for Section 1983 purposes. *See Monell v. Department of Social Services*, 436 U.S. 658,
24 690-91 (1978); *Prebilich v. City of Cotati*, No. 3:21-CV-02380-JD, 2021 WL 5964597, at *1
25 (N.D. Cal. Dec. 16, 2021).

26 Consequently, the complaint is dismissed. Freitas may file an amended complaint by May
27 9, 2022, that is consistent with this order. No new parties may be added without the Court’s prior
28 consent. A failure to comply with these requirements will result in dismissal with prejudice under

1 Federal Rule of Civil Procedure 41(b). The request for judicial notice, Dkt. No. 2, is denied, and
2 the Court did not consider any of those materials. The motions for default judgment, Dkt. Nos. 8,
3 9, and 10, are terminated as moot. Freitas is advised that his motion filings did not conform to the
4 Civil Local Rules or the Court's standing orders. All non-conforming filings in the future will be
5 summarily terminated without further consideration, and Freitas may not be allowed to file revised
6 submissions.

7 **IT IS SO ORDERED.**

8 Dated: April 22, 2022

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13 JAMES DONATO
14 United States District Judge
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APPENDIX "C"

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On Appeal from the United States District Court
For Northern California

James Donato, District Judge, Presiding

Case # D.C. No. 3:21-cv-08176-JD

John B. Freitas, Petitioner

Phone: 510-377-8777

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JAN 03 2023

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

JOHN B. FREITAS,

Plaintiff - Appellant,

v.

JUDGE NOEL WISE, Superior Court of
the State of California, Alameda
County; et al.,

Defendants - Appellees.

No. 22-16314

D.C. No. 3:21-cv-08176-JD

U.S. District Court for Northern
California, San Francisco

MANDATE

The judgment of this Court, entered December 12, 2022, takes effect this
date.

This constitutes the formal mandate of this Court issued pursuant to Rule
41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Nixon Antonio Callejas Morales
Deputy Clerk
Ninth Circuit Rule 27-7

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Petitioner

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Judge Noel Wise, et. al.

Respondents

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
Case #22-16314

APPENDIX "D"

**FILED CONCURRENTLY WITH
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On Appeal from the United States District Court
For Northern California

James Donato, District Judge, Presiding

Case # D.C. No. 3:21-cv-08176-JD

John B. Freitas, Petitioner

Phone: 510-377-8777

APPENDIX D

(Note to reader- The Numbered items coincide with the numbers in the body of the Petition for Writ of Certiorari.)

1. United States Constitution:

1st Amendment – Freedom of Speech

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

14th Amendment - § 1

". . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

14th Amendment - § 3

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**.

But Congress may by a vote of two-thirds of each House, remove such disability.

3. 42 U.S.C. § 1983 - Civil action for deprivation of rights;

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, 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, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

4. 42 U.S.C. § 1985 - Conspiracy to interfere with civil rights;

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.

42 U.S.C. § 1985 Penalty: fined under this title or imprisoned up to 3 years.

5.42 U.S.C. §1986 – Action for neglect to prevent conspiracy.....

Section 1986 - Action for neglect to prevent conspiracy.

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

9. Seditious conspiracy; 18 U.S.C § 2384

If two or more persons in any State or Territory, or in any place subject to the jurisdiction of the United States, conspire to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, or to oppose by force the authority thereof, or by force to prevent, hinder, or delay the

execution of any law of the United States, or by force to seize, take, or possess any property of the United States contrary to the authority thereof, they shall each be fined under this title or imprisoned not more than twenty years, or both.

Penalty: fined under this title or imprisoned up to 20 years.

10. Conducted a conspiracy to commit subversion. 18 U.S.C. § 371

18 U.S.C. § 371 - Conspiracy to commit offense or to defraud United States. If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each **shall be fined under this title or imprisoned not more than five years, or both.**

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

18 U.S.C. § 371

Penalty: fined under this title or imprisoned up to 3 years.

11. Tax evasion- Section 7203 proscribes the felony offense of willful tax evasion.

Section 7203 - Willful failure to file return, supply information, or pay tax

Any person required under this title to pay any estimated tax or tax, or required by this title or by regulations made under authority thereof to make a return, keep any records, or supply any information, who willfully fails to pay such estimated tax or tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$25,000 (\$100,000 in the case of

a corporation), or imprisoned not more than 1 year, or both, together with the costs of prosecution. In the case of any person with respect to whom there is a failure to pay any estimated tax, this section shall not apply to such person with respect to such failure if there is no addition to tax under section 6654 or 6655 with respect to such failure. In the case of a willful violation of any provision of section 6050I, the first sentence of this section shall be applied by substituting "felony" for "misdemeanor" and "5 years" for "1 year".

26 U.S.C. § 7203

14. Canons of Judicial Ethics Canon 3B (7)(d) and Canon 2(A)

Canon 3B(7) states:

"A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, full right to be heard according to law. A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding"

Canon 2(A)

The California Code of Judicial Ethics mandates that "[a] judge . . . shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." (Cal. Code Jud. Ethics, canon 2(A).)

15. 18 U.S.C. § 1346 – "Honest Services Fraud" is a valid Federal Claim against Corrupt Government Officials.

Title 18 U.S.C. § 1341 states in relevant part:

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined under this title or imprisoned not more than 20 years, or both

"[T]he term 'scheme or artifice to defraud' includes a scheme or artifice to deprive another of the intangible right of honest services." 18 U.S.C. § 1346.

Penalty: imprisonment for not more than 30 years, a fine for as much as \$1,000,000, or both.

16. California Penal Code 115 PC- Procurement or offering false or forged document

Section 115 - Procurement or offering false or forged document(a) Every person who knowingly procures or offers any false or forged instrument to be filed, registered, or recorded in any public office within this state, which instrument, if

genuine, might be filed, registered, or recorded under any law of this state or of the United States, is guilty of a felony. **(b)** Each instrument which is procured or offered to be filed, registered, or recorded in violation of subdivision (a) shall constitute a separate violation of this section. **(c)** Except in unusual cases where the interests of justice would best be served if probation is granted, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any of the following persons: **(1)** Any person with a prior conviction under this section who is again convicted of a violation of this section in a separate proceeding. **(2)** Any person who is convicted of more than one violation of this section in a single proceeding, with intent to defraud another, and where the violations resulted in a cumulative financial loss exceeding one hundred thousand dollars (\$100,000). **(d)** For purposes of prosecution under this section, each act of procurement or of offering a false or forged instrument to be filed, registered, or recorded shall be considered a separately punishable offense. **(e)(1)** After a person is convicted of a violation of this section, or a plea is entered whereby a charge alleging a violation of this section is dismissed and waiver is obtained pursuant to *People v. Harvey* (1979) 25 Cal.3d 754, upon written motion of the prosecuting agency, the court, after a hearing described in subdivision (f), shall issue a written order that the false or forged instrument be adjudged void ab initio if the court determines that an order is appropriate under applicable law. The order shall state whether the instrument is false or forged, or both false and forged, and describe the nature of the falsity or forgery.

17. Cal. Pen. Code 118 PC – Perjury

Section 118 - Perjury **(a)** Every person who, having taken an oath that he or she will testify, declare, depose, or certify truly before any competent tribunal, officer, or person, in any of the cases in which the oath may by law of the State of

California be administered, willfully and contrary to the oath, states as true any material matter which he or she knows to be false, and every person who testifies, declares, deposes, or certifies under penalty of perjury in any of the cases in which the testimony, declarations, depositions, or certification is permitted by law of the State of California under penalty of perjury and willfully states as true any material matter which he or she knows to be false, is guilty of perjury.

This subdivision is applicable whether the statement, or the testimony, declaration, deposition, or certification is made or subscribed within or without the State of California.

(b) No person shall be convicted of perjury where proof of falsity rests solely upon contradiction by testimony of a single person other than the defendant. Proof of falsity may be established by direct or indirect evidence.

Ca. Pen. Code § 118

18. Cal. Pen. Code § 186.11 Aggravated while collar crime enhancement.

Section 186.11 - Aggravated while collar crime enhancement (a) (1) Any person who commits two or more related felonies, a material element of which is fraud or embezzlement, which involve a pattern of related felony conduct, and the pattern of related felony conduct involves the taking of, or results in the loss by another person or entity of, more than one hundred thousand dollars (\$100,000), shall be punished, upon conviction of two or more felonies in a single criminal proceeding, in addition and consecutive to the punishment prescribed for the felony offenses of which he or she has been convicted, by an additional term of imprisonment in the state prison as specified in paragraph (2) or (3). This enhancement shall be known as the aggravated white collar crime enhancement. The aggravated white collar crime enhancement shall only be imposed once in a single criminal proceeding.

For purposes of this section, "pattern of related felony conduct" means engaging in at least two felonies that have the same or similar purpose, result, principals, victims, or methods of commission, or are otherwise interrelated by distinguishing characteristics, and that are not isolated events. For purposes of this section, "two or more related felonies" means felonies committed against two or more separate victims, or against the same victim on two or more separate occasions. (2) If the pattern of related felony conduct involves the taking of, or results in the loss by another person or entity of, more than five hundred thousand dollars (\$500,000), the additional term of punishment shall be two, three, or five years in the state prison. (3) If the pattern of related felony conduct involves the taking of, or results in the loss by another person or entity of, more than one hundred thousand dollars (\$100,000), but not more than five hundred thousand dollars (\$500,000), the additional term of punishment shall be the term specified in paragraph (1) or (2) of subdivision (a) of Section 12022.6. (b) (1) The additional prison term and penalties provided for in subdivisions (a), (c), and (d) shall not be imposed unless the facts set forth in subdivision (a) are charged in the accusatory pleading and admitted or found to be true by the trier of fact. (2) The additional prison term provided in paragraph (2) of subdivision (a) shall be in addition to any other punishment provided by law, including Section 12022.6, and shall not be limited by any other provision of law. (c) Any person convicted of two or more felonies, as specified in subdivision (a), shall also be liable for a fine not to exceed five hundred thousand dollars (\$500,000) or double the value of the taking, whichever is greater, if the existence of facts that would make the person subject to the aggravated white collar crime enhancement have been admitted or found to be true by the trier of fact. However, if the pattern of related felony conduct involves the taking of more than one hundred thousand dollars (\$100,000), but not more than five hundred thousand dollars (\$500,000), the fine shall not exceed one hundred thousand

dollars (\$100,000) or double the value of the taking, whichever is greater. (d) (1) If a person is alleged to have committed two or more felonies, as specified in subdivision (a), and the aggravated white collar crime enhancement is also charged, or a person is charged in an accusatory pleading with a felony, a material element of which is fraud or embezzlement, that involves the taking or loss of more than one hundred thousand dollars (\$100,000), and an allegation as to the existence of those facts, any asset or property that is in the control of that person, and any asset or property that has been transferred by that person to a third party, subsequent to the commission of any criminal act alleged pursuant to subdivision (a), other than in a bona fide purchase, whether found within or outside the state, may be preserved by the superior court in order to pay restitution and fines. Upon conviction of two or more felonies, as specified in subdivision (a), or a felony, a material element of which is fraud or embezzlement, that involves the taking or loss of more than one hundred thousand dollars (\$100,000), this property may be levied upon by the superior court to pay restitution and fines if the existence of facts that would make the person subject to the aggravated white collar crime enhancement or that demonstrate the taking or loss of more than one hundred thousand dollars (\$100,000) in the commission of a felony, a material element of which is fraud or embezzlement, have been charged in the accusatory pleading and admitted or found to be true by the trier of fact. (2) To prevent dissipation or secreting of assets or property, the prosecuting agency may, at the same time as or subsequent to the filing of a complaint or indictment charging two or more felonies, as specified in subdivision (a), and the enhancement specified in subdivision (a), or a felony, a material element of which is fraud or embezzlement, that involves the taking or loss of more than one hundred thousand dollars (\$100,000), and an allegation as to the existence of those facts, file a petition with the criminal division of the superior court of the county in which the accusatory

pleading was filed, seeking a temporary restraining order, preliminary injunction, the appointment of a receiver, or any other protective relief necessary to preserve the property or assets. This petition shall commence a proceeding that shall be pendent to the criminal proceeding and maintained solely to affect the criminal remedies provided for in this section. The proceeding shall not be subject to or governed by the provisions of the Civil Discovery Act as set forth in Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure. The petition shall allege that the defendant has been charged with two or more felonies, as specified in subdivision (a), and is subject to the aggravated white collar crime enhancement specified in subdivision (a) or that the defendant has been charged with a felony, a material element of which is fraud or embezzlement, that involves the taking or loss of more than one hundred thousand dollars (\$100,000), and an allegation as to the existence of those facts. The petition shall identify that criminal proceeding and the assets and property to be affected by an order issued pursuant to this section. (3) A notice regarding the petition shall be provided, by personal service or registered mail, to every person who may have an interest in the property specified in the petition. Additionally, the notice shall be published for at least three successive weeks in a 2 Section 186.11 - Aggravated while collar crime enhancement Cal. Pen. Code § 186.11 newspaper of general circulation in the county where the property affected by an order issued pursuant to this section is located. The notice shall state that any interested person may file a verified claim with the superior court stating the nature and amount of their claimed interest. The notice shall set forth the time within which a claim of interest in the protected property is required to be filed. (4) If the property to be preserved is real property, the prosecuting agency shall record, at the time of filing the petition, a lis pendens in each county in which the real property is situated which specifically identifies the property by legal description, the name of the owner of record as shown on the

latest equalized assessment roll, and the assessor's parcel number. (5) If the property to be preserved are assets under the control of a banking or financial institution, the prosecuting agency, at the time of the filing of the petition, may obtain an order from the court directing the banking or financial institution to immediately disclose the account numbers and value of the assets of the accused held by the banking or financial institution. The prosecuting agency shall file a supplemental petition, specifically identifying which banking or financial institution accounts shall be subject to a temporary restraining order, preliminary injunction, or other protective remedy. (Emphasis Added).

No. _____

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

John B. Freitas

Petitioner

v.

Judge Noel Wise, et. al.

Respondents

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

Case #22-16314

APPENDIX "E"

**FILED CONCURRENTLY WITH
PETITIONER'S PETITION FOR WRIT OF CERTIORARI**

On Appeal from the United States District Court
For Northern California

James Donato, District Judge, Presiding

Case # D.C. No. 3:21-cv-08176-JD

John B. Freitas, Petitioner

Phone: 510-377-8777

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHN B. FREITAS,
Plaintiff,

v.

NOEL WISE, et al.,
Defendants.

Case No. 21-cv-08176-JD

**ORDER REVOKING PLAINTIFF'S IN
FORMA PAUPERIS STATUS**

In John Freitas's pending appeal, the Ninth Circuit made a limited referral back to this Court to determine whether a prior grant of in forma pauperis (IFP) status should continue, or whether the appeal is frivolous or taken in bad faith. Dkt. No. 18.

An indigent party who cannot afford the expense of pursuing an appeal may file a motion for leave to proceed in forma pauperis. Fed. R. App. P. 24(a); 28 U.S.C. § 1915(a)(1). Pursuant to Federal Rule of Appellate Procedure 24(a), "a party to a district-court action who desires to appeal in forma pauperis must file a motion in the district court." The party must attach an affidavit that (1) shows in detail "the party's inability to pay or to give security for fees and costs," (2) "claims an entitlement to redress," and (3) "states the issues that the party intends to present on appeal." Fed. R. App. P. 24(a)(1). But even if a party provides proof of indigence, "[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. § 1915(a)(3). An appeal is in "good faith" where it seeks review of any issue that is "non-frivolous." *Hooker v. American Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002). An issue is "frivolous" if it has "no arguable basis in fact or law." See *O'Loughlin v. Doe*, 920 F.2d 614, 617 (9th Cir. 1990).

This appeal is frivolous. Freitas sued a California superior court judge, Alameda County, and the State of California, under 42 U.S.C. § 1983 for alleged due process and equal protection

1 violations in connection with a residential foreclosure matter. As the Court concluded in the first
2 order dismissing the complaint, a state is not a person within the meaning of Section 1983, and
3 Freitas did not come close to alleging facts that might plausibly state a claim against a sitting
4 judge, or that Alameda County engaged in a pattern or practice of misconduct for Section 1983
5 purposes. *See* Dkt. No. 11. In response to the Court's grant of leave to amend, Freitas filed a 600-
6 page amended complaint that, to the extent intelligible, repeated the same deficient allegations,
7 without meaningful additions or modifications. Dkt. No. 12. The Court filed a second order
8 dismissing all of the Section 1983 claims with prejudice. Dkt. No. 15.

9 The one new thing in the amended complaint was an ostensible racketeering claim against
10 defendants under the RICO statute, 18 U.S.C. § 1962. The conclusory and wholly speculative
11 allegations for this claim fell far short of the pleading requirements of Federal Rules of Civil
12 Procedure 8 and 9(b), and did not plausibly allege any of the essential elements of a civil RICO
13 claim. *See* Dkt. No. 15. The Court dismissed the RICO claim with prejudice because it was a
14 lock that amendment would not cure the deficiencies. *Id.*

15 Consequently, despite multiple opportunities, Freitas has not stated any claims that have
16 even an arguable basis in fact or law. IFP status is revoked. The Clerk is requested to forward
17 this order to the Ninth Circuit in Case No. 22-16314.

18 **IT IS SO ORDERED.**

19 Dated: September 1, 2022

20
21
22 
23 JAMES DONATO
24 United States District Judge
25
26
27
28

No. _____

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

John B. Freitas

Petitioner

v.

Judge Noel Wise, et. al.

Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
Case #22-16314

APPENDIX "F"

**FILED CONCURRENTLY WITH
PETITIONER'S PETITION FOR WRIT OF CERTIORARI**

On Appeal from the United States District Court
For Northern California

James Donato, District Judge, Presiding

Case # D.C. No. 3:21-cv-08176-JD

John B. Freitas, Petitioner

Phone: 510-377-8777

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.

Kalina Reynolds

Kalina Reynolds, Assistant Vice President

STATE OF North Carolina

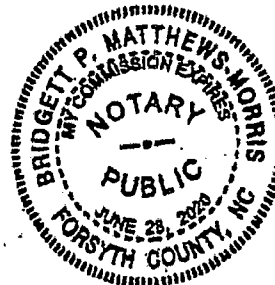
COUNTY OF Guilford

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: Kalina 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



No. _____

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

John B. Freitas

Petitioner

v.

Judge Noel Wise, et. al.

Respondents

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

Case #22-16314

APPENDIX "G"

**FILED CONCURRENTLY WITH
PETITIONER'S PETITION FOR WRIT OF CERTIORARI**

On Appeal from the United States District Court
For Northern California

James Donato, District Judge, Presiding

Case # D.C. No. 3:21-cv-08176-JD

John B. Freitas, Petitioner

Phone: 510-377-8777

7
Recording Requested By:
J. ARIAS



2005459181 10/25/2005 11:19 AM
OFFICIAL RECORDS OF ALAMEDA COUNTY
PATRICK O'CONNELL
RECORDING FEE: 52.00

Lender Service - PLD
Fidelity National Financial



13 PGS

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

[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 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
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 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 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.

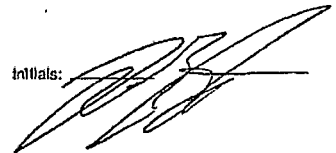
m. The pleading of any statute of limitations as a defense to any and all obligations secured by this Deed of Trust is hereby waived to the full extent permitted by law.

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)(1), 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.

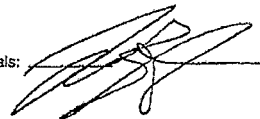
e. Trustor agrees to indemnify and hold Lender and its successors or assigns harmless from and against all losses, claims, demands, liabilities, damages, cleanup, response and remediation costs, penalties and expenses, including, without limitation, all costs of litigation and attorneys' fees, which 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.

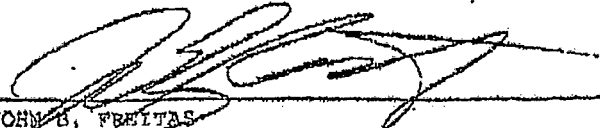
A handwritten signature in black ink, consisting of several overlapping loops and strokes, positioned over the 'Initials:' label.

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

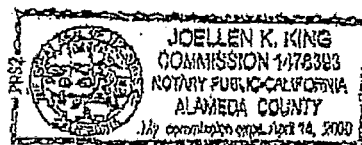
, personally appeared

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. FREITAS
PROPERTY ADDRESS: 36549 CEDAR BLVD
NEWARK, CA 94560-2532

Branch #: 0000869
1300 SAWGRASS CORP PKWY, #250
SUNRISE, FL 33323
Phone: (866)751-5767
Br Fax No.: (800)291-8910

LEGAL DESCRIPTION EXHIBIT A

FHA/VA/CONV

- Legal Description Exhibit A
- 1C404-XX (04/03)(d)



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: Deleen W. King

COMMISSION NUMBER: 1478292

NOTARY PUBLIC STATE: California

COUNTY: Alameda

MY COMM. EXPIRES: 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

8-111

No. _____

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

John B. Freitas

Petitioner

v.

Judge Noel Wise, et. al.

Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
Case #22-16314

APPENDIX "H"
FILED CONCURRENTLY WITH
PETITIONER'S PETITION FOR WRIT OF CERTIORARI

On Appeal from the United States District Court
For Northern California

James Donato, District Judge, Presiding
Case # D.C. No. 3:21-cv-08176-JD

John B. Freitas, Petitioner
Phone: 510-377-8777

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
092A-0985-021

[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
10988-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 *



2005441646

10/12/2005 11:16 AM

OFFICIAL RECORDS OF ALAMEDA COUNTY
PATRICK J. CONNELL
RECORDING FEE: 52.00



13 PGS

10/13/05
8269

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 Pitts 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.

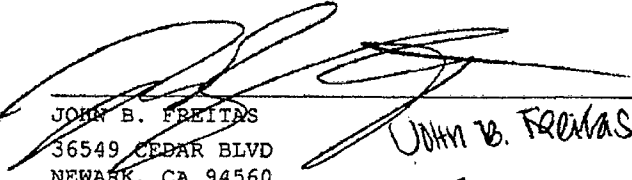
b. The execution of this Deed of Trust by any person who has a present interest in the Property shall not in itself be deemed to indicate that such person is liable to Lender for any obligation described in Section 1., above. Any personal liability of such person to Lender shall be determined on an independent 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.

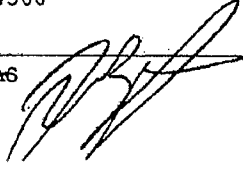
DOC ID #: 00011380375410005

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

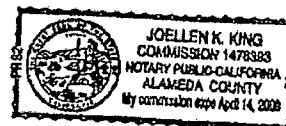
On Oct. 5, 2005, before me Joellen K. King, Notary Public
_____, personally appeared

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.





Prepared by: BARRINGTON TAYLOR

Countrywide Bank, N.A.

DATE: 10/05/2005
CASE #:
DOC ID #: 00011380375410005
BORROWER: JOHN B. FREITAS
PROPERTY ADDRESS: 36549 CEDAR BLVD
NEWARK, CA 94560-2532

Branch #: 0000869
1300 SAWGRASS CORP PKWY, #250
SUNRISE, FL 33323
Phone: (866) 751-5767
Br Fax No.: (800) 291-8910

LEGAL DESCRIPTION EXHIBIT A

FHA/VA/CONV

• Legal Description Exhibit A
1C404-XX (04/03)(d)



* 2 3 9 9 1 *



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

Order No. 51692290 - 1692290-49

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: Cherren K. King

COMMISSION NUMBER: 1478393

NOTARY PUBLIC STATE: CALIFORNIA

COUNTY: Alameda

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

SIGNATURE OF DECLARANT: SG

PRINT NAME OF DECLARANT: S. Giron

CITY AND STATE OF EXECUTION: OAKLAND, CA

DATE SIGNED: 10/12/05

THE ABOVE INFORMATION MUST BE LEGIBLE FOR SCANNING

No. _____

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

John B. Freitas

Petitioner

v.

Judge Noel Wise, et. al.

Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
Case #22-16314

APPENDIX "I"
FILED CONCURRENTLY WITH
PETITIONER'S PETITION FOR WRIT OF CERTIORARI

On Appeal from the United States District Court
For Northern California

James Donato, District Judge, Presiding

Case # D.C. No. 3:21-cv-08176-JD

John B. Freitas, Petitioner

Phone: 510-377-8777

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

06/11/2019 02:34 PM

OFFICIAL RECORDS OF ALAMEDA COUNTY

MELISSA WILK

RECORDING FEE:

92.00

COUNTY TAX:

477.40



2 PGS

TS No.: CA-14-610521-AL

Order No.: 14-0001632-01

Space above this line for recorders use

26549 CERRA 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

