

1 Robert P. Goe - State Bar No. 137019
Elizabeth A. LaRocque - State Bar No. 219977
2 GOE & FORSYTHE, LLP
18101 Von Karman Avenue, Suite 510
3 Irvine, CA 92612
Telephone: (949) 798-2460
4 Facsimile: (949) 955-9437
E-mail: rgoe@goeforlaw.com
5 elarocque@goeforlaw.com

6 Attorneys for Reorganized Debtor/Plaintiff Trudy Kalush

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8 **UNITED STATES BANKRUPTCY COURT**
9 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
10 **SANTA ANA DIVISION**

11 In re
12 TRUDY KALUSH,
13 Reorganized Debtor.

Case No. 8:11-bk-19563-ES
Chapter 11
Adv. Case No. 8:12-ap-01206-ES

14
15 TRUDY KALUSH,
16 Plaintiff,
17 vs.
18 DEUTSCHE BANK NATIONAL TRUST
19 COMPANY AS TRUSTEE OF THE
20 INDYMAC INDX DEED OF TRUST LOAN
21 TRUST 2005-AR12, DEED OF TRUST
22 PASS-THROUGH CERTIFICATES, SERIES
2005-AR12, UNDER THE POOLING AND
SERVICING AGREEMENT DATED JUNE
1, 2005; ONEWEST BANK, FSB; and DOES
1-100, Inclusive,
23 Defendants.

**PLAINTIFF TRUDY KALUSH'S
OPPOSITION TO DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT
OR, IN THE ALTERNATIVE, MOTION
FOR PARTIAL SUMMARY
ADJUDICATION; MEMORANDUM OF
POINTS AND AUTHORITIES;
DECLARATION OF ROBERT P. GOE;
AND REQUEST FOR JUDICIAL NOTICE
IN SUPPORT THEREOF**

**[Response to Separate Statement, and
Evidentiary Objections to the Affidavit of
Ronaldo Reyes and the Declaration of
Charles Boyle filed concurrently herewith]**

Hearing:
Date: November 5, 2013
Time: 2:00 p.m.
Courtroom: 5A

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26 **TO THE HONORABLE ERITHE SMITH, UNITED STATES BANKRUPTCY**
27 **JUDGE, AND PARTIES IN INTEREST:**
28

I.

INTRODUCTION

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4 Plaintiff Trudy Kalush (“Debtor” or “Plaintiff”) hereby files her Opposition (“Opposition”)
5 to the Defendants’ Motion for Summary Judgment or, In the Alternative, for Partial Summary
6 Adjudication (“Motion”). Debtor’s Motion for Partial Summary Judgment and Claim Objection
7 (“Debtor’s MSJ”) that has been consolidated with this Adversary Proceeding (“AP”) is being heard
8 concurrently herewith. Debtor incorporates by reference all arguments and Exhibits in the
9 Debtor’s MSJ in opposition to the Motion and will reference such exhibits as applicable rather than
10 again filing them with this Opposition.

11 Deutsche Bank National Trust Company (“Deutsche Bank”) and OneWest Bank (“OWB”)
12 have failed to establish pursuant to FRBP 7056 and Fed. R. Civ. P. 56 that no genuine issue of
13 material fact exists concerning Debtor’s AP against Deutsche Bank as Trustee Of The IndyMac
14 INDX Mortgage Loan Trust 2005-AR12, Mortgage Pass-Through Certificates, Series 2005-AR12
15 (“Trust”), Under The Pooling And Servicing Agreement Dated June 1, 2005 (“PSA”) and OWB
16 and Deutsche Bank are not entitled to summary judgment. Deutsche Bank was not Debtor’s
17 original lender and any rights it possesses comes through the PSA. True and correct copies of
18 pertinent pages of the PSA are attached to the MSJ as Exhibit “2”. The Cut-Off Date of the Trust
19 was June 1, 2005 and the Trust’s Closing Date was June 6, 2005. Pursuant to the Trust, Debtor’s
20 Note and DOT had to be transferred to the Trust by the Closing Date, which admittedly did not
21 occur.

22 The Motion is based nearly entirely on the Affidavit of Ronaldo Reyes (“Reyes
23 Declaration”)¹ (See concurrently filed Evidentiary Objection) who wholly fails to provide any
24 competent evidence of Deutsche Bank’s ownership of the Debtor’s Note and attaches the
25 “Endorsement to Promissory Note” (“Endorsement”) but conspicuously does not state that it was
26 attached to the Note. Further, Reyes makes no mention of why the Endorsement was not attached
27

28

¹ Attached as Exhibit A to the Reyes Declaration is the BCAP Trust which has nothing to do with Debtor’s Loan.

1 to Deutsche Bank's Proof of Claim 6 ("Claim") filed in 2011, some 6 years after Deutsche Bank
2 allegedly received Debtor's Note and the Endorsement.

3 Debtor's only other declaration is from Charles Boyle ("Boyle Declaration") (See
4 concurrently filed Evidentiary Objection) who is a vice-president of OWB. OWB allegedly did
5 not become the servicer of Debtor's Note for Deutsche Bank until March 19, 2009.
6 Notwithstanding, Boyle remarkably claims the Endorsement was "physically stapled to the Note"
7 (Boyle Declaration, page 2, lines 19-20) but makes no mention of the fact that the Note filed with
8 the claim did not have the Endorsement. The Boyle Declaration does not attach the Note or
9 Endorsement.

10 Even more alarming is that Boyle was not produced by Defendants as the person most
11 knowledgeable for OWB in response to Debtor's Notice of Deposition. Rather, OWB produced
12 Charles Ray Bean ("Bean") on December 20, 2012, who testified at his deposition as follows:

13 Page 29, lines 20-25, and page 30, lines 1 through 8:

14 "Q. Have you ever actually physically seen the original Kalush promissory note?

15 Ms. Rhim: I'm going to object. I think the question's been asked and answered.

16 The witness can answer.

17 The Witness: No, I have not seen the original. No I have not.

18 By Mr. Goe:

19 Q. Okay. So you wouldn't know then, obviously, whether or not this endorsement
20 was actually attached to the note, the physical original note?

21 A. Correct.

22 Q. You would not?

23 A. I would not know."

24 Page 36, lines 20 through 23:

25 "Q. How did Deutsche Bank become the owner of this deed of trust?

26 A. I don't know specifically how they became the owner to this loan. I don't know
27 that."

28

1 Again, Bean is the PMK of OWB, the purported servicer of Debtor's loan. Further, the
2 Claim was signed by a Michael Shaw as "agent". When asked about Shaw, Bean responded on
3 pages 8 and 9 as follows:

4 "By Mr. Goe:

5 Q. This is a proof of claim that was filed in Ms. Kalush's bankruptcy case.

6 Have you ever seen this document before?

7 A. I have.

8 Q. Now, down at the bottom it states – it's signed by Michael B. Shaw, as creditor's
9 authorized agent.

10 Do you see that?

11 A. I do.

12 Q. Who is Mr. Shaw?

13 A. I do not know.

14 Q. Now, are you the person at One West Bank who was the most knowledgeable of
15 the Kalush file?

16 Ms. Rhim: I'm going to interpose an objection. It calls for a legal conclusion.

17 I also think the question is vague and ambiguous.

18 The witness can answer if he can.

19 The Witness: I would say that I am.

20 By Mr. Goe:

21 Q. And did you authorize Mr. Shaw to file this proof of claim?

22 A. No, I did not.

23 Q. Have you ever spoken to Mr. Shaw?

24 A. No, I have not."

25 True and correct copies of pages 1, 8, 9, 29, 30 and 36 of the Bean Deposition are attached
26 to the Goe Declaration as **Exhibit "14"**.

27 In sum, neither Boyle nor Reyes even mention the Claim and failure of the Endorsement to
28 be attached nor any of the bogus assignments of the DOT (defined below).

1 Deutsche Bank's Claim is allegedly secured by the Debtor's real property commonly
2 referred to as 16625 S. Pacific Ave., Sunset Beach, California 90742 (the "Property"). Deutsche
3 Bank has the burden to prove its legal standing concerning the Promissory Note dated January 20,
4 2005 ("Note") and Deed of Trust recorded on January 27, 2005 ("DOT") in favor of Commercial
5 Capital Bank, FSB ("Commercial"). A true and correct copy of the Note is attached to the MSJ as
6 Exhibit "3" and the DOT as Exhibit "4". Deutsche Bank is improperly attempting to foreclose on
7 the Property, having recorded a Notice of Default on July 26, 2013.

8 The Motion should be denied and Debtor's MSJ should be granted and the Deutsche Bank
9 Claim disallowed and its alleged lien invalidated as it is admittedly not a perfected secured
10 creditor. The undisputed evidence is that Debtor's Note (which did not have the Endorsement
11 attached) and DOT have never been assigned to the Trust, and further any alleged attempts to
12 deliver the Note and DOT to the Trust or assign Debtor's DOT to Deutsche Bank were illegal and
13 more than 7 years after the Trust admittedly closed.

14 The Opposition is based upon Debtor's MSJ, the attached Memorandum of Points and
15 Authorities, the Request for Judicial Notice ("RJN"), the declaration of Robert P. Goe ("Goe
16 Declaration"), and the concurrently filed Response to Defendants' Separate Statement of
17 Undisputed Facts and Conclusions of Law, the papers and records on file herein, and any oral and
18 documentary evidence as may be presented as evidence at the hearing on this Motion.

19 **MEMORANDUM OF POINTS AND AUTHORITIES**

20 **I. OVERVIEW**

21 As this Court combined the Claim objection with the pending AP, Debtor filed the
22 Debtor's MSJ for partial summary judgment objecting to the Claim and to invalidate the lien in
23 the AP's First Claim for Relief. Defendants have filed the Motion basically to attempt to establish
24 ownership and validity of the Deutsche Bank lien

25 Pursuant to FRBP 3001(c) and (d), the claimant bears the burden of proof to show it is the
26 secured creditor of a claim or otherwise has standing to enforce the claim. Debtor has 2 primary
27 arguments both in support of Debtor's MSJ and in opposition to the Motion based on undisputed
28

1 facts that establish the Claim must be disallowed and Deutsche Bank determined to not be a
2 secured creditor on the Property:

3 (1) **THERE IS NO ALLONGE ATTACHED TO THE NOTE.** Deutsche Bank's
4 Claim was signed by its alleged agent Michael B. Shaw an attorney at the law firm of Brice
5 Vander Linden and Wenick, PC ("Brice Firm") (*see* MSJ, Exhibit "1"). The Claim attached the
6 Note but did not have an allonge attached, which is fatal to Deutsche Bank's standing pursuant to
7 Cal. Commercial Code, Section 3204, which as discussed herein requires that an
8 endorsement/allonge be "affixed" to the Note. Additionally, the Original Reyes Declaration (MSJ,
9 Exhibit "5" [Docket No. 272]) claims Deutsche Bank received the Note and endorsement on or
10 about April 5, 2005, while the truth is that the Claim filed in 2011 had no endorsement. At his
11 deposition (MSJ, Exhibit "6"), Reyes testified that Deutsche Bank did not hire Mr. Shaw to file
12 the Claim, and that he did not know he was filing the Claim (*See* MSJ, Exhibit "6"). The Debtor
13 reviewed the Original Collateral Loan File ("Loan File") at Deutsche Bank's counsel's office
14 which included evidence that the Brice Firm had the file in its possession prior to the filing of the
15 Original Reyes Declaration. The Loan File contained a cover sheet entitled Collateral File
16 Imaging Checklist, which stated on April 23, 2012 there was no allonge present ("N/A"). (MSJ,
17 Exhibit "7".) **Neither Boyle or Reyes ever mention that the Loan File was with the Brice**
18 **Firm as late as April 23, 2012.**

19 (2) **DEBTOR'S NOTE AND DOT WERE NOT TIMELY TRANSFERRED TO**
20 **THE TRUST AND THERE IS NO CHAIN LINKING DEUTSCHE BANK.** Deutsche Bank
21 filed the Original Reyes Declaration to support ownership of Debtor's loan through the Trust and
22 PSA. Remarkably, Reyes admits that Deutsche Bank did not receive the Debtor's DOT until May
23 3, 2012 or nearly 7 years after the PSA closed. Further, he provides absolutely no evidence that
24 Debtor's loan was timely assigned to the Trust. Deutsche Bank was required to strictly comply
25 with the PSA which had a Cut Off Date of June 1, 2005 and a Closing Date of June 6, 2005. (*See*
26 MSJ, Exhibit "2", PSA, pages 20-21.) The PSA is governed by New York law (*see* PSA, page
27 112). Pursuant to Section 2.01(a), (b), and (c), as of the June 6, 2005 PSA Closing Date, the
28 original endorsed Note, Mortgage (deed of trust) and assignment of Mortgage had to be delivered.

1 (See PSA, pages 59-50.) This admittedly did not occur and any purported assignment of the DOT
2 to Deutsche Bank is void. Now, Defendants claim the multiple assignments of the DOT discussed
3 below as mere “housekeeping”.

4 Pursuant to an extremely important and recent case, the Debtor has standing to challenge a
5 securitized trust’s ownership pursuant to the decision of the California Court of Appeal of Glaski
6 v. Bank of America, N.A., 218 Cal. App. 4th 1079 (2013) which held:

7 “We conclude that a borrower may challenge the securitized trust’s chain
8 of ownership by alleging the attempts to transfer the deed of trust to the
9 securitized trust (which was formed under N.Y. law) occurred after the trust’s
10 closing date. Transfers that violate the terms of the trust instrument are void
11 under New York law, and borrowers have standing to challenge void assignments
12 of their loans even though they are not a party to, or a third party beneficiary of,
13 the assignment agreement.”

14 See Glaski at 1083 (emphasis added)

15 Thus, any alleged assignment or transfer to Deutsche Bank is void.

16 As discussed below, Debtor’s DOT has allegedly been assigned at least five (5) times
17 through either recorded or unrecorded assignments. As stated, there has never been a timely
18 assignment to the Trust. In fact, unbelievably, after the Original Reyes Declaration was filed and
19 after Deutsche Bank filed numerous pleadings opposing confirmation, on January 23, 2013 JP
20 Morgan Chase Bank (“JPMorgan”) executed a “Corporate Assignment of Deed of Trust”
21 (“1/23/13 Assignment”) assigning Debtor’s DOT to OneWest Bank (MSJ, Exhibit “11”.) How
22 did JP Morgan acquire Debtor’s DOT, which purportedly was owned by Deutsche Bank through
23 the Trust that closed in June 2005? For over 2 years in the bankruptcy proceeding Deutsche Bank
24 claimed it held the DOT and filed the Claim. The break in chain of title and failure to comply
25 with the Trust is admitted.

26 There is no valid assignment to Deutsche Bank recorded or unrecorded. A chronological
27 history of all the assignment is set forth below.

28 The Motion should be denied, Debtor’s MSJ granted and the Court should issue an order
that Deutsche Bank has no lien on the Property.

1 Plaintiff is not a dead beat trying to get a free house. Quite the contrary. This Debtor
2 placed over \$600,000 of her life savings into the Property.

3 As discussed herein and in Plaintiff's MSJ, there is no valid chain of title, no chain of
4 assignments to give notice, no attached allonge, such that Defendants cannot show ownership of
5 the Note and DOT. Working behind the scenes the Defendants create false documents to defraud
6 this and other Courts.

7 Defendants' story of ownership of the Note and DOT is ever changing, and now the
8 alleged assignment by Indymac Federal Bank, FSB ("IndyMac Fed") to Deutsche Bank as Trustee
9 was apparently false, and the alleged assignment did not transfer the Note, which is void and
10 should be cancelled as stated in the Complaint.

11 The Loan File was in the hands of the Defendants' bankruptcy attorney, the Brice Firm
12 (who stated no allonge exists) when the purported allonge and unrecorded assignment was
13 miraculously discovered by OWB, not by Deutsche Bank. As noted in Plaintiff's MSJ there was
14 no allonge or any assignment of the DOT attached to the Claim. Then allegedly these were given
15 to Deutsche Bank by Reyes who testified that his declaration was based off his computer records
16 which he did not produce. Reyes implies that the collateral file was with Deutsche Bank as
17 custodian. But they were not. Deutsche Bank as stated in Reyes Deposition does not make any
18 copies of the original files or any files sent out by Deutsche Bank. Thus, all of Debtor's original
19 loan files were with the Brice Firm that was charged with filing Deutsche Bank's Claim.

20 **II. STATEMENT OF FACTS**

21 1. In January 2005, Debtor obtained a loan from Commercial.

22 2. In June 2005, the Trust closes and Debtor's DOT was admittedly never delivered to
23 Deutsche Bank until May 3, 2012, if ever. (*See* Original Reyes Declaration, the PSA, and 1/23/13
24 Assignment.)

25 3. On July 7, 2011, the Debtor filed for protection under Chapter 11 of the
26 Bankruptcy Code.

27 4. On August 2, 2011, Deutsche Bank through its agent Michael B. Shaw (an attorney
28 at the Brice Firm) filed the Claim (*See* MSJ, Exhibit "1".)

1 5. Deutsche Bank included with the Claim a copy of the Note with a certification
2 stamp on the page 1 of the Note and a copy of the DOT from Commercial. There were no
3 endorsements to the Note.

4 6. Not only did the Claim fail to attach the allonge/endorsement which later surfaced,
5 there were also no assignments to the DOT, which also magically were produced both recorded
6 and unrecorded. In fact, notwithstanding Deutsche Bank having claimed all along that it had
7 standing in this case, there was no assignment of the DOT to Deutsche Bank until allegedly June
8 12, 2013, over eight (8) years after the Trust closing, nearly two (2) years after it filed the Claim,
9 and over a year after it filed its stay motion. Here is a history of the DOT and alleged assignments
10 of the DOT:

- 11 (i) January 27, 2005, DOT in favor of Commercial (MSJ, Exhibit "4");
12 (ii) March 16, 2005, unrecorded assignment from Commercial to IndyMac
13 Bank, FSB ("IndyMac") (MSJ, Exhibit "8")²;
14 (iii) March 30, 2005, unrecorded assignment from IndyMac Bank, FSB
15 ("IndyMac Fed") to unknown creditor (MSJ, Exhibit "9"). IndyMac Fed
16 had no ability to assign the DOT to Deutsche Bank as there was never any
17 assignment from Commercial to IndyMac Fed;
18 (iv) April 5, 2011, recorded assignment from IndyMac Fed to Deutsche Bank
19 (MSJ, Exhibit "10"). In addition to being nearly six (6) years after the Trust
20 closing, IndyMac Fed had no ability to execute an assignment to Deutsche
21 Bank;
22 (v) 1/23/13 Assignment from JPMorgan Chase Bank to OWB (MSJ, Exhibit
23 "11"). JPMorgan was never assigned the DOT and had no ability to assign
24 to OWB. Debtor propounded written discovery on JPMorgan which
25 include a request for all assignments of Debtor's DOT (RFP No. 3).

26
27 ² It is highly suspicious why this assignment was never recorded as there were an identical 15 other assignments from
28 Commercial to Indymac signed by the same person (Dale Schiering) and notarized by the same notary (Linh my Le)
that were actually recorded. The 15 assignments from Commercial to Indymac are attached to the RJN as Exhibit
"15".

1 JPMorgan provided its "Response to Subpoena by Debtor Trudy Kalush"
2 stating it had no documents (MSJ, Exhibit "13");

3 (vi) June 12, 2013, Assignment of Deed of Trust from Onewest to Deutsche
4 Bank (MSJ, Exhibit "12").

5 The breaks in the chain are obvious, but what is most appalling is that nearly a
6 decade after the PSA closed on June 6, 2005, years after the bankruptcy filing and months after
7 Debtor's Plan was confirmed, on June 12, 2013, the DOT is allegedly assigned to Deutsche Bank.

8 7. Deutsche Bank has never amended the Claim.

9 8. On May 1, 2013, the Court entered its Order Confirming Debtor's Third Amended
10 Chapter 11 Plan of Reorganization, dated March 21, 2013, which provided for the Court to retain
11 jurisdiction over the Deutsche Bank Claim objection and AP.

12 9. The PSA in Section 2.2 Acceptance by the Trustee of the Mortgage Loans,
13 provides:

14 If a substitution or purchase of a Mortgage Loan pursuant to this provision
15 is required because of a delay in delivery of any documents by the
16 appropriate recording office, or there is a dispute between either the
17 Master Servicer or the Seller and the Trustee over the location or status of
18 the recorded document, then the substitution or purchase shall occur
19 within 720 days from the Closing Date. In no other case may a
20 substitution or purchase occur more than 540 days from the Closing Date.

(See MSJ, Exhibit "2", PSA, pages 52-53.)

19 10. Pursuant to the PSA, Exhibit H-1-1, entitled *Form of Final Certification of Trustee*,
20 it provides:

21 In accordance with section 2.02 of the above Captioned Pooling and
22 Servicing Agreement (the "Pooling and Servicing Agreement"), the
23 undersigned, as Trustee, hereby certifies that as to each Mortgage Loan
24 listed in the Mortgage Loan Schedule (other than any Mortgage Loan paid
25 in full or listed on the attached Document Exception Report it has received:

26 (i) The original Mortgage Note, endorsed in the form provided in
27 Section 2.01(c) of the Pooling and Servicing Agreement, with all
28 intervening endorsements showing a complete chain of
endorsement from the originator to the Seller.

(ii) The original recorded Mortgage.

(iii)

1 (iv) The original or duplicate original recorded assignment or
2 assignments of the Mortgage showing a complete chain of
3 assignment from the originator to the Seller.

4 (*See*, MSJ, Exhibit "2", PSA Exhibit H1-1, 2) (emphasis added)

5 11. None of the above were accomplished by the June 6, 2005 Cut-Off and,
6 therefore, the Claim of Deutsche Bank is void and its alleged lien invalid. Consequently,
7 Defendants Motion must be denied.

8 12. In fact, Deutsche Bank falsely executed the Initial and Final Certifications of
9 Trust that state all conditions of the PSA have been satisfied, which are attached to the RJN as
10 Exhibit "16".

11 13. Pursuant to the PSA, promissory notes are defined in UCC 9-102 and not as an
12 UCC 3 negotiable note. Thus, Defendants arguments concerning Article 3 are inapplicable.
13 Section 10.04 Intention of Parties.

14 It is the express intent of the parties hereto that the conveyance (i) of the
15 Mortgage Loans by the Seller to the Depositor and (ii) of the Trust Fund by
16 the Depositor to the Trustee each be, and be construed as, an absolute sale
17 thereof. It is, further, not the intention of the parties that such conveyances
18 be deemed a pledge thereof. However, if, notwithstanding the intent of the
19 parties, the assets are held to be the property of the Seller or Depositor, as
20 the case may be, or if for any other reason this Agreement is held or
21 deemed to create a security interest in either such assets, then (i) this
22 Agreement shall be deemed to be a security agreement within the meaning
23 of the UCC and (ii) the conveyances provided for in this Agreement shall
24 be deemed to be an assignment and a grant (i) by the Seller to the Depositor
25 or (ii) by the Depositor to the Trustee, for the benefit of the
26 Certificateholders, of a security interest in all of the assets transferred,
27 whether now owned or hereafter acquired.

28 The Seller and the Depositor for the benefit of the
Certificateholders shall, to the extent consistent with this Agreement, take
such actions as may be necessary to ensure that, if this Agreement were
deemed to create a security interest in the Trust Fund, such security interest
would be deemed to be a perfected security interest of first priority under
applicable law and will be maintained as such throughout the term of the
Agreement. The Depositor shall arrange for filing any Uniform
Commercial Code continuation statements in connection with any security
interest granted or assigned to the Trustee for the benefit of the
Certificateholders.

MSJ, Exhibit "5", page 183

1 14. The PSA also states that the PSA would be recorded in the appropriate real
2 property records, which did not occur.

3 Section 10.02 Recordation of Agreement; Counterparts.

4 This Agreement is subject to recordation in all appropriate public
5 offices for real property records in all the counties or other comparable
6 jurisdictions in which any or all of the properties subject to the Mortgages
7 are situated, and in any other appropriate public recording office or
8 elsewhere, such recordation to be effected by the Master Servicer at its
9 expense, but only upon receipt of an Opinion of Counsel to the effect that
10 such recordation materially and beneficially affects the interests of the
11 Certificateholders. For the purpose of facilitating the recordation of this
12 Agreement as herein provided and for other purposes, this Agreement may
13 be executed simultaneously in any number of counterparts, each of which
14 counterparts shall be deemed to be an original, and such counterparts shall
15 constitute but one and the same instrument.

16 MSJ, Exhibit "5", page 111

17 **III. AUTHORITY AND ARGUMENT**

18 **A. LEGAL STANDARD FOR SUMMARY JUDGMENT PURSUANT TO** 19 **F.R.C.P. 56.**

20 Pursuant to Federal Rule of Civil Procedure 56 (which is incorporated in the Federal Rules
21 of Bankruptcy Procedure by Rule 7056), and a series of United States Supreme Court cases
22 interpreting the same, a party can properly move for summary judgment as to every cause of
23 action, where it does not have the burden of proof, without submitting supporting affidavits. See
24 *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S. Ct. 2548 (1986); *Anderson v. Liberty Lobby,*
25 *Inc.*, 477 U.S. 242, 248 (1986). Under these facts, the moving party need only inform the court of
26 the basis for the motion. In contrast, to withstand such a motion, the responding party must
27 introduce sufficient admissible evidence, as to every single element of its case, to convince a
28 reasonable jury that a judgment could be rendered in its favor. *Celotex*, at 324; *British Motor Car*
Distrib. v. San Francisco Art, 882 F. 2d 371, 374 (9th Cir. 1989) ("To withstand summary
judgment the non-moving party must make a showing sufficient to establish a genuine issue of
fact with respect to every element for which it bears the burden of proof").

A fact is material if it might affect the outcome of the suit under the governing law.
Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). Indeed, "the moving party may simply

1 point to the absence of evidence to support the nonmoving party's case." *In re Brazier Forest*
2 *Prod. Inc.*, 921 F.2d 221, 223 (9th Cir. 1990). Conclusory statements, speculation, personal
3 beliefs, and unsupported assertions cannot withstand a summary judgment motion, and the court
4 will not "presume []" "missing facts." *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 888-89
5 (1990). Objections to proofs of claims are governed by FRBP 3007 and 9014. Deutsche Bank
6 bears the burden of proof.

7 **B. THERE WAS NO ALLONGE PROPERLY AFFIXED TO THE NOTE ON**
8 **THE CLAIM AND, THUS, THE CLAIM MUST BE DISALLOWED.**

9 Defendants think they have solved all their problems by having Reyes and Boyle state the
10 Endorsement has always been attached to the Note since 2005, although the claim filed in 2011
11 did not attach the Endorsement and their own attorneys at the Brice Firm who had the Loan File
12 stated in writing that no Endorsement was in the file. Not so fast.

13 The Note is payable to the original lender, Commercial, and the Note is all that was
14 attached to the Claim (MSJ, Exhibit "1"). No endorsements or allonge was attached to the Note or
15 Claim, which unequivocally established that the allonge was not firmly affixed to the Note.
16 Further, no assignments of the DOT (recorded or unrecorded) were attached to the Claim.

17 Furthermore, the Brice Firm filed the Claim and its own Collateral Filing Image Checklist
18 stated that as of April 23, 2012 (8 months after the Claim was filed) there was no allonge (MSJ,
19 Exhibit "7".)

20 At his Deposition, Reyes admitted Deutsche Bank did not have Shaw file the Claim.

21 Q. Let's take a look at what's marked Exhibit #3.

22 This is the proof of claim that was filed in Ms. Kalush's bankruptcy proceeding on
23 or about August 2, 2011.

24 Have you ever seen this document before?

25 A. No.

26 Q. Now, at the bottom it's got a signature from Michael Shaw, as creditor's
authorized agent. Did Deutsche hire Mr. Shaw?

27 MS. RHIM: Objection. Vague.

28 THE WITNESS: No.

1 Q. Now, this document was signed on August 2, 2011. And Mr. Shaw attached a
2 promissory note and deed of trust. Do you see that?

3 A. Yes, I see those documents.

4 Q. Did Deutsche give those document to Mr. Shaw?

5 MS. RHIM: Objection. Vague.

6 THE WITNESS: No.

7 (See MSJ, Exhibit "6", Reyes Deposition, page 28, lines 10-25 and page 29, lines 1-6)

8 The instructions provided on the Claim Form clearly indicates that the claimant is required
9 to attach copies of any documents that show the debt exists and a lien secures the debt, as well as
10 evidence of perfection of any security interest. [POC Form B-10, ¶7]. The Claim Form further
11 indicates that the party signing the form is doing so under penalty of perjury that the information
12 provided is true and correct. [POC Form B-10].

13 The Note attached to the Claim under penalty of perjury does not evidence that Deutsche
14 Bank is the holder of the Note. It shows that the Noteholder is Commercial. The DOT attached to
15 the Claim, which was recorded January 27, 2005, shows Commercial as the beneficiary of the
16 DOT. There is no evidence that Deutsche Bank has an interest in the Note or DOT.

17 Deutsche Bank in response to discovery taken in connection with the Debtor's AP
18 produced an allonge allegedly showing the Note transferred to Indymac (which does not even
19 evidence Deutsche Bank's interest). Again, this allonge was clearly not attached to the Note as
20 required under the Cal. Commercial Code and California case law, and is therefore ineffective.
21 Had the allonge existed at the time Deutsche Bank filed the Claim, and it was properly affixed to
22 the Note, it would have been copied and included with the Note and Claim. In fact, its own
23 attorneys at the Brice Firm admitted no allonge existed.

24 *Cal. Commercial Code*, §3204 defines an "Indorsement" as a "signature, other than that of
25 a signer as maker, drawer, or acceptor, that alone or accompanied by other words is made on an
26 instrument for the purpose of (1) negotiating the instrument, (2) restricting payment of the
27 instrument, or (3) incurring indorser's liability on the instrument, but regardless of the intent of the
28 signer, a signature and its accompanying words is an indorsement unless the accompanying words,
terms of the instrument, place of the signature, or other circumstances unambiguously indicate that

1 the signature was made for a purpose other than indorsement. For the purpose of determining
2 whether a signature is made on an instrument, a paper affixed to the instrument is a part of the
3 instrument.” [Emphasis added].

4 **1. Practice Regarding the Indorsement of Notes Through**
5 **Allonges**

6 Deutsche Bank alleges that the Note and DOT were transferred to the Trust. Trusts were
7 commonly used as the owners of pools of mortgages so that the mortgages could be securitized
8 and mortgage-backed instruments could be issued based on the pools of mortgages. The transfer
9 of mortgage notes that typically accompanies the securitization of mortgages is governed by
10 applicable state law as well as any requirements built into the securitization transaction
11 documents, or, for loans purchased or guaranteed by them, any requirements by the Government
12 Sponsored Entities (GSEs) such as Fannie Mae and Freddie Mac. See Elizabeth Renuart, *Property*
13 *Title Trouble in Non-Judicial Foreclosure States: The Ibanez Time Bomb?* (February 21, 2012).
14 Albany Law School Research Paper No. 38 of 2011-2012. At. P. 6. Available at SSRN:
15 <http://ssrn.com/abstract=1968504>.

16 Fannie Mae’s guides for servicers and document custodians provide guidance in the
17 treatment of allonges in several places. In Fannie Mae’s Document Custodian Certification Job
18 Aids, which “provide additional detailed information regarding what is required for institutions
19 that are providing document certification and custody services on behalf of Fannie Mae,” the Job
20 Aids direct that an “Allonge is acceptable to complete the Chain of Endorsements when: (1) the
21 form and manner of Allonge used complies with applicable state, local, and federal laws governing
22 the use of Allonges; (2) it results in a valid and enforceable endorsement to the Note; (3) it is
23 permanently affixed to the Note; and, (4) it clearly identifies the Note.” See Fannie Mae’s
24 Document Custodian Certification Job Aids, at p. 17, found at
25 <https://www.efanniemae.com/is/doccustodians/pdf/doccustjobaid.pdf>.

26 The Fannie Mae Seller’s Guide repeats this admonition of permanent affixing regarding an
27 allonge, stating, “The allonge must be permanently affixed to the related note . . .” Fannie Mae
28 Selling Guide for Single Family, at p. 921, available at

1 <https://www.efanniemae.com/sf/guides/ssg/sg/pdf/sel022812.pdf>.

2 Freddie Mac's Servicer Guide also states that the allonge must be permanently affixed and
3 must abide by law, stating, "Seller may use an Allonge to endorse a Note if the following
4 conditions are met: . . . The Allonge is permanently affixed to the Note . . . The form of the
5 Allonge, and its use, complies with all applicable laws. . ." Freddie Mac Servicer Guide, 16.4 e):
6 Endorsement of Notes (02/26/10), Available <http://www.allregs.com/tpl/main.aspx>. Freddie
7 Mac's Document Custody Procedures Handbook provides Document Custodians with the
8 following direction, "You may certify a Note that has an Allonge attached if:

9 • The Allonge is permanently affixed to the Note (taping or pasting the Allonge to the Note
10 are not acceptable), and

11 • The Allonge references the Borrower's name, the address of the Mortgaged Premises,
12 and the original principal balance of the Note." Freddie Mac's Document Custody Procedures
13 Handbook, Chapter 3, p. 17, available at:

14 http://www.freddiemac.com/cim/pdf/2011_chapter_3.pdf.

15 **2. State Law Regarding the Indorsement of Notes Through** 16 **Allonges**

17 In California, as noted, that law is contained in the *Cal. Commercial Code* §3204. There
18 are several California cases regarding the requirement that allonges be affixed to notes. The first
19 case, decided by the California Supreme Court in *Hays v. Plummer*, 126 Cal. 107 (1899), where
20 the court held that a separate document not attached to a note could not provide an indorsement to
21 the note, stating:

22 "[S]uch indorsement can be made only by the writing of the indorser's name on
23 the back of the instrument, if there be room to do so, and, if not, then on a paper
24 so attached to it as in effect to become part of it,—called sometimes an 'allonge. .
25 . At all events, the name must be so written as to become in effect a part of the
26 instrument. This is not only the rule under the general authorities, but it is so
27 declared by our Code. Civ. Code, § 3110. In the case at bar there was merely an
28 assignment of the mortgage and note made on a separate writing without
indorsement on the note."

Id., at 109.

1 The *Hays* decision was relied on in the case, *Lopez v. Puzina*, 239 Cal.App.2d 708, 49
2 Cal.Rptr. 122 (1966). There, the court noted that though a few courts in other states had espoused
3 a minority view that an allonge does not have to be attached to the note in order to constitute an
4 indorsement, the rule in California is otherwise. The Court stated, “the general rule followed by
5 most jurisdictions, including California, being that an endorsement must be written on the
6 instrument itself or on a paper attached or annexed thereto in order to effectively charge one with
7 the liability of an endorser, or to give rights of an endorsee.” *Id.* at 712.

8 Another California decision to discuss this issue was *Security Pac. Nat'l Bank v. Chess*, 58
9 Cal.App.3d 555, 129 Cal.Rptr. 852 (1976), in which the plaintiff argued that the notes should be
10 read in conjunction with separate documents of transfer. The court again found that because the
11 supposed indorsements were not written on the notes themselves or on “a paper so firmly affixed
12 thereto as to become a part thereof,” the separate documents did not constitute indorsements to the
13 notes. *Id.* at 562.

14 It should be noted that in 1992, California adopted the 1990 revision of the UCC, which
15 changed the language of the provision regarding the affixing of allonges. Under the pre-1990
16 version, then contained in § 3-202 an indorsement on an allonge must be on a paper “so firmly
17 affixed thereto as to become a part thereof.” The post-1990 version of the UCC moved this
18 provision to §3204 and changed the language to “a paper affixed to the instrument is a part of the
19 instrument.” However, this did not change the requirements of affixing. In *In re Shapoval*, 441
20 B.R. 392, 394 (Bankr.D.Mass.2010), the court stated “Nevertheless, it is well-settled that the 1998
21 amendment maintained the requirement that an allonge be affixed to the original instrument. *See*
22 *Dyck-O'Neal v. Pungitore*, No. 01-P-1775, 60 Mass.App.Ct. 1109, 800 N.E.2d 727, 2003 WL
23 22998879, at *2, n. 6 (Mass.App.Ct. Dec.22, 2003) (applying the pre-1998 statute but suggesting,
24 under those facts, the result would be identical under the amendments); *In re Weisband*, 427 B.R.
25 13, 19 (Bankr.D.Ariz.2010) (finding under an identical Arizona provision that an unattached
26 allonge that was not included with a proof of claim and later submitted did not sufficiently prove a
27 creditor's holder in due course status required to obtain relief from the automatic stay); *Big*
28 *Builders, Inc. v. Israel*, 709 A. 2d 74, 76 (D.C. 1998) (finding under an identical District of
Columbia provision that the language change from “firmly affix” to “affix” still requires physical

1 attachment).”

2 A recent California case regarding whether allonges have to be physically attached to notes
3 to constitute indorsements is *Multibank 2009-1 RES-ADC Venture, LLC v. San Diego Community*
4 *Housing Corporation, et al.* (DC SD CA March, 2011) 2011 U.S. Dist. LEXIS 28721. In that
5 case, the court explicitly held that where there is no evidence that an allonge was stapled to a note
6 or otherwise attached to it, the allonge does not constitute an indorsement of the note. The court
7 stated:

8 “Plaintiff has failed to demonstrate that it is the holder of the note because,
9 although it is in possession of the note, it has failed to demonstrate that the note is
10 properly payable to Plaintiff. An allonge purporting to make the note payable to
11 Plaintiff accompanies the Mr. Yaffe's declaration. (Yaffe Decl. Ex. B, at 1.)
12 However, for the allonge to constitute part of the note, it must be on ‘a paper
13 affixed to the instrument.’ Cal. Com.Code § 3204. Here, the evidence does not
14 demonstrate that the allonge is affixed to the note. The allonge is on a separate
15 sheet of paper; there is no evidence that it is stapled or otherwise attached to the
16 note.”

17 The *Multibank* decision cited with approval two cases from outside California that have
18 analyzed similar situations, *Adams v. Madison Realty & Dev., Inc.*, 853 F.2d 163, 166 (3d
19 Cir.1988) and *In re Weisband*, 427 B.R. 13, 18-20 (Bankr.D.Ariz.2010). *Adams* is one of the most
20 cited cases regarding the standards of affixing an allonge to a note. In *Adams*, two promissory
21 notes were folded, with indorsements “[i]nserted loosely within the fold, lacking any physical
22 attachment to the note. . .” *Id.* at 165. The *Adams* Court noted that the Official Comment to the
23 UCC then stated that the Code “follows decisions holding that a purported indorsement on a
24 mortgage or other separate paper pinned or clipped to an instrument is not sufficient for
25 negotiation. The indorsement must be on the instrument itself or on a paper intended for the
26 purpose which is so firmly affixed to the instrument as to become an extension or part of it. Such a
27 paper is called an allonge.” (Citing U.C.C. § 3-202 Official Code Comment (3) to the pre-1990
28 UCC). *Id.* In *Adams*, the court outlined some of the policy reasons for requiring that allonges be
physically affixed to notes in order to provide an indorsement.

“The affixation requirement has also been cited for its utility in preserving a
traceable chain of title, thus furthering the Code's goal of free and unimpeded
negotiability of instruments. Nearly a century ago, the Supreme Court of Georgia
declared it ‘indispensably necessary’ that negotiable instruments ‘should carry

1 within them the indicia by which their ownership is to be determined; otherwise,
2 their value as a circulating medium would be largely curtailed, if not entirely
3 destroyed.’ *Haug v. Riley*, 101 Ga. 372, 29 S.E. 44, 46 (1897). *See also Crosby*,
16 Wis. at 627 (permanently attached indorsements to instrument ‘travel with it
wherever it might go’).”

4 *Id.* at 167.

5 According to *Adams*, the physical attachment of the allonge is also necessary so that a
6 borrower for a note can determine who can enforce the note based on the indorsements either on
7 the note or on allonges affixed to it.

8
9 “From the maker's standpoint, therefore, it becomes essential to establish that the
10 person who demands payment of a negotiable note, or to whom payment is made,
is the duly qualified holder. Otherwise, the obligor is exposed to the risk of double

11 payment, or at least to the expense of litigation incurred to prevent duplicative
12 satisfaction of the instrument. These risks provide makers with a recognizable
13 interest in demanding proof of the chain of title. Consequently, plaintiffs here, as
14 makers of the notes, may properly press defendant to establish its holder status.”
Id. at 168.

15 The decision in *Adams* also provides strong guidance to other courts not to relax the
16 requirements of allonges for the benefit of banks and other sophisticated dealers in notes, stating:

17 “[The bank] is not in a strong position to justify equitable relaxation of a settled
18 formality in the Code. That longstanding provision was enacted, after all, for the
19 benefit of parties in [the bank’s] position, commercial sophisticates that trade in
20 the secondary market for negotiable instruments. The provision is not ambiguous,
21 nor can [the bank] assert excusable ignorance of an unusual local technicality,
22 given the rule's universal application. The flaws in the notes should have been
23 perceived quickly and readily cured. Instead, the record suggests that the failure to
24 observe that Code formality was caused by nothing short of sheer carelessness.
25 Financial institutions, noted for insisting on their customers' compliance with
26 numerous ritualistic formalities, are not sympathetic petitioners in urging
27 relaxation of an elementary business practice. It is a tenet of commercial law that
28 ‘[h]oldership and the potential for becoming holders in due course should only be
accorded to transferees that observe the historic protocol.’ (Cites omitted.) In
sum, we are not persuaded that defendant presents a credible case for
nonapplication of the plain wording of the state statutes.”

26 *Id.* at 169 (footnotes omitted).

27 ///

28

1 *In re Weisband*, 427 B.R. 13, 18-20 (Bankr.D.Ariz.2010), also cited by the *Multibank*
2 decision is on all fours with the present situation where *GMAC* filed a proof of claim that did not
3 include an allonge but later in connection with *GMAC*'s stay motion produced a special
4 endorsement.

5 Judge Hollowell said not so fast and ruled:

6 “Under Arizona law, a holder is defined as ‘the person in possession of a
7 negotiable instrument that is payable either to bearer or to an identified
8 person that is the person in possession.’ *A.R.S. §47-1201(B)(21)(a)*. *GMAC*
9 has failed to demonstrate that it is the holder of the Note because, while it
10 was in possession of the Note at the evidentiary hearing, it failed to
11 demonstrate that the Note is properly payable to *GMAC*. A special
12 endorsement to *GMAC* was admitted into evidence with the Note. However,
13 for the Endorsement to constitute part of the Note, it must be on ‘a paper
14 affixed to the instrument.’ *A.R.S. §47-3204; see also In re Nash, 49 B.R.*
15 *254, 261 (Bankr. D. Ariz. 1985)*. Here, the evidence did not demonstrate

16 that the Endorsement was affixed to the Note. The Endorsement is on a
17 separate sheet of paper; there was no evidence that it was stapled or
18 otherwise attached to the rest of the Note. Furthermore, when *GMAC* filed
19 its proof of claim, the Endorsement was not included, which is a further
20 indication that the allonge containing the Endorsement was not affixed to
21 the Note.” (emphasis added)

22 *Id.* at 18.

23 Judge Hollowell further ruled:

24 “Thus, ownership of the note never transferred to the defendant. Applying
25 that principle to the facts here, *GMAC* did not become a holder of the Note
26 due to the improperly affixed special endorsement. (emphasis added)

27 *Id.* at 18.

28 Other cases requiring that an allonge be physically attached to a note to provide an
endorsement include *Big Builders, Inc. v. Israel*, 709 A.2d 74, 76 (D.C.1998), where the court
stated, “The primary obstacle to this contention is that, as the [purported holders of the note]
concede, the assignment was never physically affixed to the note. ‘Affix’ in its literal meaning is
‘to attach physically.’” *Id.* at 76, citing WEBSTER'S THIRD NEW INTERNATIONAL
DICTIONARY 36 (1971).

The bottom line is that the certified Note attached under penalty of perjury to the Claim did
not have the allonge. The Brice Firm who filed the Claim and had possession of the loan file also

1 confirmed there was no allonge. Mysteriously, after its claim is objected to by Debtor, Deutsche
2 Bank produces an uncertified copy of the Note with an allonge. The allonge was clearly not
3 affixed to the Note as required by law or it would have been part of the certified Note and copied
4 and attached to the Claim as part of the Note and, therefore, the Claim must be disallowed.

5 C. **PURSUANT TO *GLASKI*, ANY ALLEGED ASSIGNMENT OF DEBTOR'S**
6 **LOAN TO DEUTSCHE BANK IS VOID AS IN VIOLATION OF THE**
7 **TRUST AND PSA.**

8 Defendants Motion states a number of times that Debtor has no standing to challenge
9 Defendants compliance with the Trust. Again, they are wrong as set forth in the *Glaski* decision
10 below. In addition to the Original Reyes Declaration and Reyes Declaration, at his Deposition,
11 Reyes confirmed the DOT was not delivered by the Trust Closing Date:

12 Q. So is there a document that says that the Kalush Deed of Trust was not delivered as of
13 the closing of the PSA?

14 A. That the Kalush mortgage was not delivered or that the – that's what you're asking?

15 Q. It says the original recorded mortgage, which you say you received on May 3, 2012?

16 A. Right.

17 Q. You did not have it as of the closing – Deutsche did not have it as of the closing of this
18 trust; correct?

19 A. That's correct based on our business records, that's correct.

20 See MSJ, Exhibit "6", Reyes Deposition Page 22, Line 15-25, and page 23, lines 1-2)

21 On July 31, 2013, California Court of Appeals handed down their landmark decision in
22 *Glaski* and Bank of America's petition for rehearing was denied. In sum, Debtor has standing to
23 challenge whether her loan was timely transferred to the Trust and if it was not, Deutsche Bank's
24 Claim is void. Here, the undisputed evidence in the original Reyes Declaration and Reyes
25 Declaration and Reyes Deposition testimony, and the assignments of the DOT, evidence that
26 Debtor's loan was not transferred to the Trust by the PSA's June 6, 2005 Closing Date.

27 The *Glaski* decision is rooted in two basis and related inquiries that clarify and simplify the
28 "authority to foreclose" question in California. First, does the borrower allege that the foreclosing

1 party was not the beneficiary based on specific facts? Second, if borrower's claim is based on a
2 failed assignment was the assignment void?

3 The facts in *Glaski* are on "all-fours" with Debtor's case.

4 In July 2005, *Glaski* purchased a home in Fresno and executed a promissory note and a
5 deed of trust that granted WaMu a security interest in his property. The *Glaski* deed of trust
6 identified WaMu as the lender and the beneficiary, defendant California Reconveyance as the
7 trustee, and *Glaski* the borrower. *Id.* at 1083.

8 In late 2005, the WaMu Mortgage Pass-Through Certificates Series 2005-AR12 Trust was
9 formed as a common law trust ("WaMu Trust") under New York law. The corpus of the WaMu
10 Trust consisted of a pool of residential mortgage notes purportedly secured by liens on residential
11 real estate. The closing date for the WaMu Trust was December 2, 2005, or 90 days thereafter.
12 *Id.* at 1084. This is exactly like the Trust formed here, which had a June 6, 2005 Closing Date.

13 Just like our case, years after the WaMu Trust closed on December 9, 2008, JP Morgan
14 recorded an assignment of deed of trust. *Id.* at 1083.

15 As in *Glaski* where the "chain of title was broken", the Appellate Court found the
16 assignments void. Here the chain of title is completely lacking. Not only were any assignment
17 and deliveries done years after the Trust closed but there are numerous intervening parties (e.g., JP
18 Morgan).

19 The *Glaski* Court made it clear that a borrower can challenge standing in a securitized
20 transaction by holding:

21 "We reject the view that a borrower's challenge to an assignment must fail once it
22 is determined that the borrower was not a party to, or third party beneficiary of,
23 the assignment agreement. Cases adopting that position "paint with too broad a
24 brush." (*Culhane v. Aurora Loan Services of Nebraska, supra*, 708 F. 3d at p.
25 290.) Instead, courts should proceed to the question whether the assignment was
26 void."

27 *Id.* at 1095.

28 The *Glaski* Court then addressed the void act of the WaMu Trust attempting to accept a
loan after the closing date by stating:

1 “Because the WaMu Securitized Trust was created by the pooling and servicing
2 agreement and that agreement establishes a closing date after which the trust may
3 no longer accept loans, this statutory provision provides a legal basis for
concluding that the trustee’s attempt to accept a loan after the closing date would
be void as an act in contravention of the trust document.”

4 *Id.* at 1096

5 The *Glaski* Court also addressed certain District Court rulings (none binding on this Court)
6 that dealt with post-closing transfer arguments and distinguished them as follows:

7 “We are aware that some federal district courts sitting in California have rejected
8 the postclosing date theory of invalidity on the grounds that the borrower does not
9 have standing to challenge an assignment between two other parties. (*Aniel v.*
10 *GMAC Mortgage, LLC* (N.D.Cal., Nov. 2, 2012, No. C 12-04201 SBA) 2012 WL
11 5389706 [joining courts that held borrowers lack standing to assert the loan
12 transfer occurred outside the temporal bounds prescribed by the pooling and
servicing agreement]; *Almutarreb v. Bank of New York Trust Co., N.A.* (N.D.Cal.,
Sept. 24, 2012, No. C 12-3061 EMC) 2012 WL 4371410.) These cases are not
persuasive because they do not address the principle that a borrower may
challenge an assignment that is void and they do not apply New York trust law to
the operation of the securitized trusts in question.”

13 *Id.* at 1099.

14 In sum, *Glaski* is the precise same situation as here (i.e., a trust with a closing date and
15 efforts by the lender to assign the deed of trust years after the trust closed). Based on *Glaski*, the
16 Deutsche Bank Claim is void and must be disallowed.

17 **D. IN ADDITION TO NOT COMPLYING WITH THE TRUST, THERE IS NO**
18 **VALID ASSIGNMENT OF THE DOT.**

19 California Code of Civil Procedure (“CCP”), Section 1624 sets forth certain types of
20 agreements that must be in writing in order to be enforceable. Among those agreements listed in
21 the statute are: contracts to sell an interest in real property. Every state has some type of Statute of
22 Frauds; the law's purpose is to prevent the possibility of a nonexistent agreement between two
23 parties being "proved" by perjury or fraud. CCP §1626. A contract in writing takes effect upon its
24 delivery to the party in whose favor it is made, or to his agent.

25 Clear and positive evidence of valid sales includes the facts of each purported sale in light
26 of: (1) California law prohibiting enforcement of the Note and DOT against the mortgagor absent
27 negotiation of the note (i.e., endorsement by an authorized person and delivery); and (2) whether
28 each sale was made in strict accordance with (a) the agreements contained in the unproduced
Mortgage Loan Purchase Agreement and Loan Sale Agreement between Commercial and

1 IndyMac, (b) the PSA, as required under New York law, which expressly governs the relationship
2 of the parties to the PSA, and (c) federal laws and regulations governing sales of mortgages to
3 REMICs.

4 As evidenced by the *Glaski* decision, a fast-growing body of case law arising out of the
5 mortgage crisis holds that mortgagors have standing to assert claims in court to ensure that they
6 only pay the right parties. See, e.g., *Naranjo v. SBMC Mortgage*, 2012 WL 3030370 (S.D. Cal.
7 July 24, 2012) (borrower alleging her loan was not validly assigned to trust may seek restitution of
8 sums paid to defendants and declaration that defendants may not enforce note and trust deed);
9 *Javaheri, supra; Ohlendorf, supra; Kemp v. Countrywide Home Loans, Inc.*, 440 B.R. 624, 629-
10 630, 634 (Bankr. D. N.J. 2010) (bank bought note and mortgage as trustee under pooling and
11 servicing agreement but never possessed the note; neither bank nor its servicer allowed to enforce
12 the note); *Deutsche Bank National Trust Co. v. Ramotar*, 2011 WL 66041 (N.Y. Sup. 2011)
13 (allegations of robo-signing and other concerns about bank's standing were sufficient to raise
14 triable issues of fact precluding summary judgment in favor of bank suing to foreclose on Ramotar
15 home); *U.S. Bank National Assn. v. Ibanez*, 458 Mass. 637, 649-50 (Sup.Ct. Mass. 2011)
16 ("*Ibanez*") (banks which submitted self-contradictory securitization documents undermining their
17 claims to have received assignments of mortgages could not foreclose).

18 Here, as the DOT was purportedly transferred to unknown entities [not to Deutsche Bank]
19 and/or others without the accompanying Note, the transfer is a legal nullity, and whoever holds the
20 DOT alone, without the note, holds a void instrument. This is because "[t]he note and the
21 mortgage are inseparable; the former as essential, the later as an incident. An assignment of the
22 note carries the mortgage with it, while an assignment of the latter alone is a nullity." *Carpenter*
23 *v. Longan*, 83 U.S. 271, 274 (1872).

24 **1. The Indymac Fed DOT Assignment to Deutsche Bank Recorded April 3, 2011**
25 **is Void as it Did Not Include the Note.**

26 The Note was never owned by IndyMac Fed according to Plaintiff's Freedom of
27 Information Act request, as only the servicing was sold as properly alleged in the AP.
28

1 Any attempt to transfer the beneficial interest of a DOT without ownership of the
2 underlying note is void under California law. Civ. Code § 2936 (“The assignment of a debt
3 secured by mortgage carries with it the security”).

4 **2. The Indymac Fed Assignment in Blank Dated March 30, 2005 is Void.**

5 In determining the validity of the deed involved we must consider not only the intent of the
6 grantor but also whether the deed was delivered to and accepted by the grantee as an unequivocal
7 transfer of title to him. As stated by the court in Reina v. Erassarret, 90 Cal. App. 2d 418, 426 [203
8 P.2d 72, 7 A.L.R.2d 1309]:

9 “‘Delivery’ is a word of well-defined meaning of law. The elements are that
10 the writing must be meant by the maker to take immediate effect and be
11 presumably or in fact, accepted by the other party. The delivery and acceptance are
12 of necessity simultaneous and correlative acts. The law does not force a man to
13 take title to real property against his will. (Hibberd v. Smith, 67 Cal. 547 [4 P. 473,
14 8 P. 46, 56 Am.St.Rep. 726].) Hence, the assent of the grantee is necessary in order
15 to make a delivery effective and the deed operative as such.”

16 An assignment in blank is not valid and is void.

17 **3. Defendants Did Not Receive A Valid Assignment.**

18 Because Defendants did not originate Debtor’s loan, their claimed right to enforce is based
19 on being assignees of the Note and DOT. Parties claiming rights under an assignment bear the
20 burden of proving they received valid assignments. See Mata v. Citimortgage, etc., et al.c 2011
21 WL 4542723 (C.D. Cal. 2011), *2 (because, under Cockerell, a party claiming rights under an
22 assignment has the burden of proving a valid assignment, borrowers stated a claim for declaratory
23 relief as to the perfection and validity of the secured interest, where defendants refused borrowers’
24 demands to provide such proof); see also In re Veal, 450 B.R. 897, 908, 913 (9th Cir. B.A.P.
25 2011) (financial institutions that were not initial note payees were required to demonstrate facts to
26 establish prudential standing to sue to enforce it, in turn requiring them to demonstrate a factual
27 basis for claiming the substantive legal right to enforce it).

28 One who fails to prove a valid assignment has “no standing to complain” about not
receiving proceeds of the note or a sale of property securing it. Cockerell v. Title Ins. & Trust Co.,
42 Cal.2d 284, 293 (Cal. 1953).

In Cockerell, a party claimed it had been assigned a mortgage note and was therefore
entitled to the proceeds of a nonjudicial foreclosure sale of the property securing the debt.
Addressing the sufficiency of the evidence offered to prove the assignment, the California

1 Supreme Court wrote: “*The burden of proving an assignment falls upon the party asserting rights*
2 *thereunder...the measure of sufficiency requires that the evidence of assignment be clear and*
3 *positive to protect an obligor from any further claim by the primary obligee” See Cockerell at*
4 292, (citations omitted).

5 Since an assignee acquires no better rights than those belonging to the assignor (*Cockerell,*
6 *supra*, 42 Cal.2d at p. 293), the validity of the claimed assignments of the DOT depends on the
7 validity of each purported sale of their note. Defendants must prove the validity with respect to
8 each assignor in the chain of title to the note, including the authority of any indorser “to bind that
9 company.” *Id.* A court may not simply assume these facts: “Such assumptions, would indeed,
constitute a ‘dangerous innovation.’” *Id.*

10 Every assignment in the chain must be valid or the party claiming the note cannot enforce it. *In*
11 *re Gavin*, 319 B.R. 27, 32 (B.A.P. 1st Cir. 2004); *In re Wells*, 407 B.R. 873 (Bankr. N.D. Ohio 2009).

12 As discussed above, there is an unrecorded assignment of the DOT from Commercial to
13 Indymac Fed dated March 16, 2005. (MSJ, Exhibit “8”). Why it was not recorded is unclear but
14 Debtor would note the following:

15 a. Direct inspection of original collateral file demonstrated that this was a photocopy
16 and not original.

17 b. Debtor obtained 15 assignments (RJN, Exhibit “15”) that were recorded from
18 Commercial to Indymac Fed, all dated March 16, 2005, and executed and notarized by the same
19 parties. These documents demonstrate that the proffered assignment has significant irregularities,
20 and question a material fact of authenticity presented by Defendants.

21 c. The assignment refers to that certain Mortgage Loan Purchase Agreement between
22 Commercial and IndyMac Fed, which Defendants never produced.

23 d. No wire information was given to support what IndyMac Fed paid Commercial for
24 Debtor’s DOT.

25 Then on March 30, 2005, IndyMac Fed executed an assignment to an unknown creditor
26 (MSJ, Exhibit “9”).

1 Six years later IndyMac Fed recorded an assignment of the DOT to Deutsche Bank on
2 April 5, 2011, while there is no explanation as to what has occurred with the Note and DOT in the
3 intervening 6 years.

4 Defendants state that the PSA assigns IndyMac's interest to IndyMac Fed who then
5 allegedly assigns its interest to Deutsche Bank as the custodian. However, the PSA was not
6 followed. Moreover, the PSA states these are UCC 9 promissory notes and not UCC 3 negotiable
7 notes. Therefore the attempted use of UCC by Deutsche Bank as holder in due course fails by the
8 PSA.

9 A trust deed can only be enforced by the owner of the note it secures [not a random
10 purported holder of an unauthenticated note]. *Adler v. Sargent* (1895) 109 Cal. 42 at pp. 49-50;
11 see also Restatement Property 3d, § 5.4(c), Transfer of Mortgages and Obligations Secured by
12 Mortgages. Hence, one in possession of a deed of trust cannot enforce it unless he also owns, or
13 represents the owner of, an existing debt that the deed of trust it secures. *Adler, supra*; see also
14 *Ohlendorf v. Amer. Home Mort. Servicing* (E.D. Cal. 2010) 2010 WL 31098 (non-judicially
foreclosing defendants "must prove that they have the right to foreclose").

15 Before a note and trust deed can be enforced by a purchaser, assignee or transferee, or their
16 authorized agents, the note must be *negotiated*, which requires that the note be endorsed and
17 delivered to the transferee. *Pribus v. Bush* (1981) 118 Cal.App.3d 1003 (absent valid endorsement
18 a purchaser is not a holder entitled to enforce the note³); *Adler, supra*.

19 Delivery of the original note [including a firmly attached allonge] is required because
20 without physical transfer, a sale of personal property (including a mortgage note) is conclusively
21 presumed to be a fraudulent conveyance under Civil Code § 3440. See *Bunting v. Saltz* (1890) 84
22 Cal. 168, 169-170; see also Roger Bernhardt, *California Mortgages and Deeds of Trust, and
Foreclosure Litigation*, § 1.26 (4th ed. 2009).

23 One obvious reason for requiring endorsement of the note is so the note itself reflects the
24 transfer. It also helps ensure that mortgagors pay the party to whom the obligation is owed, while
25 also ensuring they do not pay—or worse, lose their property to—persons not entitled to receive

26 ³ The *Pribus* court assumed, without analysis that Article 3 of the California Commercial Code applied to the
27 mortgage note and deed of trust at issue in that case. As explain later, Article 3 does not apply to California real
28 property mortgages. Nevertheless, California courts may look to the Commercial Code for guidance in analogous
situations to which it does not apply. See, e.g., *Pollard v. Saxe and Yolles Dev. Co.* (1974) 12 Cal.3d 374, 380
(Supreme Court looked to Commercial Code provisions regarding sales of goods for guidance in case involving
warranties on real property).

1 payment on the note or otherwise enforce it and the accompanying security agreement. *Cockerell*
2 *v. Title Ins. & Trust Co.* (1954) 42 Cal.2d 284; *see also: Adams; Pribus, supra.*

3 It is a tenet of commercial law that “holdership” and the potential for becoming holders in
4 due course should only be accorded to transferees that observe the historic protocol.” (*Adams,*
5 *supra*, 853 F.2d at pp. 166-169.) *Adams* and *Pribus* clearly demonstrate that a transferee in
6 possession of a note lacking a valid indorsement to it cannot enforce the obligation against the
7 original borrower. Instead, its remedy is against the commercial partner from whom they
8 purchased the note.

9 The question of delivery or non-delivery of a deed is a question of fact to be determined
10 from the surrounding circumstances of the transaction and to constitute a valid, effective delivery,
11 it must be shown that the grantor intended to divest himself of title. (*Miller v. Jansen*, 21 Cal. 2d
12 473, 477 [132 P.2d 801]; *Williams v. Kidd*, 170 Cal. 631, 638, 639 [151 P. 1, Ann.Cas. 1916E
13 703].)

14 The act of the delivery of the deed must be accompanied with the intent that it shall
15 become presently operative as such and presently pass title. (*Fay v. Norquist*, *supra*, p. 223;
16 *Williams v. Kidd*, *supra*, pp. 638, 639.) Whether or not the [112 Cal. App. 2d 396] requisite intent
17 exists is a question of fact for the trial court or jury. (*Counter v. Counter*, 104 Cal. App. 2d 786,
18 789 [232 P.2d 551].) Here it is admitted that the DOT was not timely delivered to the Trust.

19 Finally, on July 23, 2013, out of the blue, JPMorgan assigns the DOT to OWB and then
20 five months later, OWB assigns the DOT to Deutsche Bank. How did JPMorgan have anything to
21 assign 8 years after the closing of the Trust?

22 The Defendants have failed to establish ownership of the Note and DOT, and the Motion
23 must be denied.

24 **E. PLAINTIFF’S NOTE IS NOT A NEGOTIABLE INSTRUMENT UNDER**
25 **UCC 3, AND THE PSA PROVIDES THAT IT IS A UCC 9 NOTE SO**
26 **OWNERSHIP MUST BE PROVED.**

27 Defendants Motion on pages 6-7 argue that plaintiffs’ note is a negotiable instrument
28 within the meaning of Article 3 of the California Commercial Code, and that Deutsche Bank or
Onewest can enforce it as a “holder” within the meaning of that article, and perfect the assignment
by use of the PSA

The argument suffers from several fundamental flaws.

1 First, as a matter of law under Civil Code § 1642, a California mortgage note cannot be a
2 “negotiable instrument” under Article 3 of the California Commercial Code. Thus, Article 3’s
3 provisions regarding enforceability by a “holder” are irrelevant. Second, the argument depends
4 upon the Note meeting several conditions set forth in Commercial Code § 3102(a). Furthermore,
5 whether the note meets these conditions is a question which by its nature presents factual issues
6 not resolvable on summary judgment.

7 Defendants cite *In re Zulueta*, 2011 WL 4485621, *4(BAP 9th Cir. Aug. 23, 2011), which
8 is a case where OWB was a servicer holding a note with a stamp from Indymac Bank and the
9 original deed of trust was delivered, and there was no issues relating to validity of the lien. This
10 was prior to *Glaski*, which held:

11 “We conclude that a borrower may challenge the securitized trust’s chain
12 of ownership by alleging the attempts to transfer the deed of trust to the
13 securitized trust (which was formed under N.Y. law) occurred after the trust’s
14 closing date. Transfers that violate the terms of the trust instrument are void
15 under New York law, and borrowers have standing to challenge void assignments
16 of their loans even though they are not a party to, or a third party beneficiary of,
17 the assignment agreement.”

18 Second the PSA that Deutsche Bank uses when convenient, states that the notes are UCC 9
19 promissory notes. Promissory notes are defined in the PSA under UCC 9-102, which provides:

20 9-102 (a)(65)

21 “Promissory note” means an instrument that evidences a promise to pay a
22 monetary obligation, does not evidence an order to pay, and does not contain an
23 acknowledgment by a bank that the bank has received for deposit a sum of money
24 or funds.

25 Defendants’ UCC arguments all ultimately hinge on the proposition that the Note [if it had
26 the Endorsement firmly attached which it did not] is a negotiable instrument under Article 3 of the
27 California Uniform Commercial Code. As a matter of law, however, it cannot be.

28 Stated succinctly, Debtor’s argument is this: Article 3 applies to negotiable instruments.
To qualify as a negotiable instrument, the note would have to be “unconditional.” That means all
of its essential terms have to appear within the body of the note—the note cannot incorporate any
substantive terms contained in another document. A California real property mortgage note
cannot be a negotiable instrument under Article 3 because, as a matter of law under Civil Code §

1 1642, it incorporates the terms of the accompanying trust deed, rendering it conditional within the
2 meaning of Article 3.

3 Section 3104 sets out the requirements of a negotiable instrument governed by Article 3.
4 According to § 3104(a), a “negotiable instrument” (i) contains an unconditional promise to pay;
5 (ii) is payable to order or bearer (§ 3104(a)(1)); (iii) on demand or at a definite time (§
6 3104(a)(2)); and (iv) does not state any other undertakings (§ 3104(a)(3)).

7 Section 3106(a) provides that for the purposes of § 3104(a), “a promise or order is
8 unconditional unless it states . . . (2) that the promise or order is subject to or governed by another
9 writing, or (3) that rights or obligations with respect to the promise or order are stated in another
10 writing.” In other words, § 3104 does not apply if the promise is not unconditional, and a promise
11 is not unconditional if it is “subject to,” “governed by,” or “stated in,” another writing.

12 Civil Code § 1642 provides: “Several contracts relating to the same matters, between the
13 same parties, and made as parts of substantially one transaction, are to be taken together.” As a
14 result of Civil Code § 1642, every California real property mortgage note includes obligations that
15 are, in part, stated in the deed of trust, and every California real property deed of trust includes
16 obligations that are, in part, stated in the mortgage note. Accordingly, all California real property
mortgage notes secured by deeds of trust are outside the scope of § 3104(a).

17 A note and trust deed, although two instruments, form parts of one transaction and must be
18 read and construed together. *Kerivan v. Title Ins. & Trust Co.* (1983) 147 Cal.App.3d 225, 230;
19 accord *Huckell v. Matranga* (1979) 99 Cal.App.3d 471, 481 (note, mortgage, and agreement of
20 sale constitute one contract where part of same transaction); *Nevin v. Salk* (1975) 45 Cal.App.3d
21 331, 338 (same); *Lilly-Brackett Co. v. Sonnemann* (1910) 157 Cal. 192, 200 (“note and mortgage
are one inseparable contract”).

22 Furthermore, the note, being inseparably connected with the mortgage, and affected by the
23 conditions therein, is not negotiable, even though such notes may be negotiable under the laws of
24 some other states. *Meyer v. Weber* (1901) 133 Cal. 681; see also *Musto v. Grosjean* (1929) 208
25 Cal. 453, 458 (promissory note for purchase of real property secured by mortgage “is not a
negotiable instrument”).

26 Similarly, Debtor’s loan consists of two executed documents: the Note and the DOT.
27 Both were executed at the same time, as part of the same transaction, and must therefore be
28 considered one instrument according under Civil Code § 1642 and the cited cases. As a result,

1 each instrument incorporates the terms and conditions of the others, making the Note non-
2 negotiable under Article 3.

3 Article 3, one would expect the article to be rife with provisions defining and concerning
4 those terms. Yet none are present. Indeed, the lack of references to real property mortgages or the
5 instruments involved in them is striking.

6 In *Debrunner v. Deutsche Bank National Trust Co.*, 138 Cal.Rptr.3d 830 (Cal.App.2012)
7 the California Court of Appeal refutes Deutsche Bank's reliance on the Commercial Code
8 provisions pertaining to negotiable instruments as there is no stated requirement in California's
9 non-judicial foreclosure scheme that requires a beneficial interest in the Note to foreclose. Rather,
10 the statute broadly allows a trustee, mortgagee, beneficiary, or any of their agents to initiate non-
11 judicial foreclosure. Accordingly, the statute does not require a beneficial interest in both the Note
12 and the Deed of Trust to commence a non-judicial foreclosure sale. This again is different than
13 ownership that Defendants must establish.

14 The UCC applies to goods, general intangibles, and other personalty—even *chattel*
15 mortgages. These references to goods, intangibles, etc., combined with the absence of references
16 to real property mortgages, indicates that the latter are outside the scope of Article 3.

17 Rather, Defendants' attempted sales of Plaintiff's Note is governed by the law of contract.
18 Under the common law of contract, a transferee does not acquire valid title to the note, and so
19 cannot enforce it or the accompanying trust deed, unless and until the transfer is perfected by the
20 parties' full performance of the agreement of sale or transfer. In the analogous situation of
21 perfection of a transfer of title to real property, the Court of Appeal wrote:

22 Title is duly perfected when all steps have been taken to make it perfect, i.e., to
23 convey to the purchaser that which he has purchased, valid and good beyond all
24 reasonable doubt. *Hocking v. Title Ins. & Trust Co.*, [(1951)], 37 Cal.2d 644, 649 .
25 . . . *If there is want of performance or want of true consent the title cannot be said*
26 *to be perfected.* (C.C. secs. 1567–1589.)

27 *Kessler v. Bridge* (1958) 161 Cal.App.2d 837, 841 (emphasis added)

28 Under the principle that want of performance means title is not perfected, the seller's
failure to fulfill all of its obligations with respect to the sale of a promissory note leaves the
buyer's title to the note unperfected. In our case, title to the Note was never perfected in any of
the purchasers, because the sellers of Plaintiff's Note failed to perform their obligations under the
law and the PSA, nor was there an attached Endorsement.

1 The federal government has sanctioned OWB and other major lenders and servicers for
2 various wrongful practices, including proffering false evidence in court cases. *See Morgan v.*
3 *HSBC Bank USA, NA*, (Ky. App. 2011) 2011 WL 3207776 (“finding it ‘troubling’ that plaintiff
4 [bank] first asserted that the note was unavailable, then filed a note payable to a prior lender, and
5 then with its motion for summary judgment produced a new allonge to the note endorsing the note
6 to the plaintiff”).

7 Section 3302(a)(2) contains additional conditions a party in possession of a note must meet
8 to achieve the status of a holder in due course. Among others, Defendants must show that the
9 party in possession took the instrument for value and in good faith, without notice of various
10 potential defenses including but not limited the presence of an unauthorized signature or alteration.
11 These inherently factual issues are not amenable to resolution on a summary motion.

12 **F. THE MOTION SHOULD BE DENIED AS TO THE FIRST CLAIM FOR**
13 **RELIEF FOR DECLARATORY RELIEF/INVALIDATE LIEN AGAINST**
14 **DEFENDANTS.**

15 The Supreme Court has provided guidance for the procedure for obtaining a declaratory
16 judgment under 28 U.S.C. § 2201. The existence of another adequate remedy does not preclude a
17 declaratory judgment that is otherwise appropriate, as Deutsche Bank argues.

18 Section 2201(a) of Title 28 of the United States Code permits a party to bring a cause of
19 action "in a case of actual controversy within its jurisdiction....any court of the United States, upon
20 the filing of an appropriate pleading, may declare the rights and other legal relations of any
21 interested party seeking such declaration, whether or not further relief is or could be sought." As to a
22 controversy to invoke declaratory relief, the question is whether there is a "substantial controversy,
23 between parties having adverse legal rights, or sufficient immediacy and reality to warrant the
24 issuance of a declaratory judgment." *Maryland Cas. Co. v. Pacific Coal & Oil Co.*, 312 U.S. 270
(1941).

25 "First, the court must inquire whether there is a case of actual controversy within its
26 jurisdiction. Jurisdiction to award declaratory relief exists only in a case of actual controversy.
27 *Wickland Oil Terminals v. ASARCO, Inc.*, 792 F.2d 887, 893 (9th Cir. 1986). The Court held that
28 this requirement is identical to the Article III's constitutional case or controversy requirement.

1 *Societal de Conditionnement en Aluminium v. Hunter Eng'g Co.*, 655 F.2d 938, 942 (9th Cir.
2 1981).

3 A declaratory judgment is appropriate in cases where the controversy is (1) actual or real,
4 (2) ripe for judicial determination, and (3) it relates to the legal relations of parties having adverse
5 interests. Ripeness only exists when the court can determine present rights which have become
6 fixed under an existing state of facts. *Santa Barbara County V. U.S.*, 269 F.Supp. 855, (D.C. Cal.
7 1967). "A party has adverse interests if there is an assertion of a right, status, or legal relation in
8 which the plaintiff has a definite interest, and a denial of it by the opposing party. *Public Service*
9 *Comm'n of Utah V. Wycoff*, 344 U.S. 237, 73 S.Ct. 236 (1952)."

10 Moreover, California State law is in accord. It is axiomatic that a cause of action for
11 declaratory relief served the purpose of adjudicating future rights and liabilities between parties. *See*
12 *Cardellini v. Casey*, 181 Cal.App.3d 389 (1986); *Bachis v. State Farm Mutual Auto Ins. Co.*, 265
13 Cal.App.2d 722 (1968). When an actual controversy exists, as is the case here, declaratory relief is
14 appropriate "(1) when judgment will serve a useful purpose in clarifying and settling the legal
15 relations in issue, and (2) when it will terminate and afford relief from the uncertainty, insecurity,
16 and controversy giving rise to the proceeding." *Guerra v. Sutton*, 783 F.2d 1371, 1376 (9th Cir.
17 1986). The existence of another adequate remedy does not preclude a judgment for declaratory relief
18 in cases where it is appropriate. Fed. Civ. Proc. 57. The Ninth Circuit has explained that while there
19 is no bar to declaratory relief if legal remedies exist, a court's discretion should lead it to refuse to
20 grant declaratory relief unless it would clarify the parties' interests or relieve the uncertainty giving
21 rise to the proceeding. *U.S. v. Washington*, 759 F.2d 1353, 1356-57 (9th Cir. 1985).

22 In *Schafer v. CitiMortgage, Inc.*, 2011 WL 2437267 (C.D. Cal. 2011) court upheld a
23 declaratory relief claim in a similar action to this one, noting that there was a controversy over
24 whether the assignment of a deed of trust was fraudulent, and the cause of action was not
25 duplicative. 2011 WL 2437267 at *4. While it is possible that declaratory relief will be unnecessary,
26 it would be premature to dismiss the cause of action at this point.

27 Here, Plaintiff has alleged facts to support both an actual case and controversy and that
28 Defendants actions are ongoing and will continue in the future. As noted herein and in Plaintiff's
MSJ, Defendants are attempting to foreclose on the Note and DOT they do not own or service.

1 Therefore, Plaintiff's declaratory relief claim is cognizable as an independent cause of action. *See*
2 *Seattle Audubon Soc'y v. Moseley*, 80 F.3d 1401, 1405 (9th Circ. 1996) ("A declaratory judgment
3 offers a means by which rights and obligations may be adjudicated in cases brought by any
4 interested party involving an actual controversy that has not reached a stage at which either party
5 may seek a coercive remedy and in cases where a party who could sue for coercive relief has not
6 yet done so.")

7 Deutsche Bank along with its alleged agent OWB filed the Claim which included neither the
8 Endorsement attached nor any of the assignments to the DOT. This is fatal to Deutsche Bank's
9 alleged ownership of the Note and the Claim must be disallowed and the lien invalidated. This is the
10 exact same relief requested in the First Claim for Relief in this adversary proceeding that has been
11 consolidated with the Claim Objection.

12 **G. The Motion Should be Denied as to the Third Claim for Relief for Slander of**
13 **Title Against Defendants.**

14 Slander or disparagement of title occurs when a person, without a privilege to do so, publishes a
15 false statement that disparages title to property and causes the owner thereof some special pecuniary
16 loss or damage. *Barrionuevo v. Chase Bank, N.A.*, 885 F. Supp. 2d 964, 975 (N.D. Cal. 2012) [*17]
17 (Judge Edward M. Chen) (quoting *Sumner Hill Homeowners' Ass'n, Inc. v. Rio Mesa Holdings, LLC*,
18 205 Cal. App. 4th 999, 1030, 141 Cal. Rptr. 3d 109 (2012)) (internal quotation marks omitted). The
19 tort's elements include: (1) a publication, (2) without privilege or justification, (3) falsity, and (4) direct
20 pecuniary loss. (Citing *Sumner Hill*, 205 Cal. App. 4th at 999).

21 Here, Plaintiff demonstrates all of the elements necessary for slander of title by the bogus
22 assignments of the DOT and unlawful foreclosure being pursued by Deutsche Bank based on such
23 unlawful assignments. This action has then rendered Plaintiff's title to the Property as unmarketable
24 and requiring the filing of bankruptcy with the stigma, and costs associated therewith.

25 **H. The Motion Should be Denied as to the Fifth Claim for Relief for Violation of**
26 **the Truth in Lending Act ("TILA") Against DNBTC.**

27 Deutsche Bank admits it was allegedly assigned the ownership interest in the loan by the
28 June 12, 2013 assignment of the DOT from Deutsche Bank. (*See* Debtor's MSJ, Exhibit "12".) As
an assignee, Deutsche Bank falls squarely within 15 U.S.C. § 1641(g), which creates liability for

1 the assignees of the loan's original creditor if the assignee fails to notify the borrower of the
2 acquisition. 15 U.S.C. § 1641(g). Plaintiff's Adversary Proceeding was filed on April 26, 2012
3 within the 1-year statutory period.

4 15 U.S.C. § 1641(g), titled "Liability of Assignees," requires that when an entity purchases
5 or is assigned the beneficial interest in a loan on a property, it must notify the borrower in writing
6 within 30 days of when the loan is transferred. 15 U.S.C. § 1641(g). Subsection (g) lists the
7 particular information that the assignee's notice must contain. This subsection only applies to the
8 "new owner or assignee of the debt. 15 U.S.C. § 1641(g). 15 U.S.C. § 1640 authorizes a civil
9 action for violations of § 1641 for (1) actual damages, or (2) statutory damages that may include
10 (a) damages equal to twice the amount of any finance charge or (b) for a credit transaction secured
11 by real property an amount not less than \$400 and not greater than \$4,000. 15 U.S.C. § 1640(a)

12 Deutsche Bank argues that as a general rule, trustees are not subject to TILA in California
13 because trustees have limited liability in California's non-judicial foreclosure process. However,
14 Deutsche Bank cannot both foreclose on the Plaintiff's Property, thereby claiming a beneficial
15 interest in the Note securing Plaintiffs' loan, and simultaneously claim that it is not a creditor
16 subject to TILA's provisions.

17 In *Vogan vs. Wells Fargo*, 2011 U.S. Dist. LEXIS 132944, (E.D. Cal. November 16, 2011)
18 the Court found that the Trustee of a Mortgage Backed Security Trust ("MBS") was the Creditor
19 [Trustee as Creditor] under the 15 U.S.C. § 1641(g).

20 Under the common law of trusts, a "trustee is subject to personal liability to third persons
21 on obligations incurred in the administration of the trust to the same extent that he would be liable
22 if he held the property free of trust." See *Restatement (2d) of Trusts § 261*. Exempting all trustees
23 from TILA would permit trusts acting as lenders to completely evade TILA's provisions.

24 The Motion should be denied.

25 **I. The Motion Should be Denied as to the Sixth Claim for Relief for Quiet Title**
26 **Against Defendants**

27 A void instrument such as an undelivered or a forged deed does not convey anything
28 and cannot be made the foundation of a good title. *Montgomery v. Bank of America* (1948) 85

1 Cal.App.2d 559; *Trout v. Taylor*, 220 Cal. 652, 656 [32 P.2d 968]. There is no language that
2 Deutsche Bank can point to in the DOT that grants and conveys to it the power of sale.

3 As set forth in *Glaski*, the DOT not being delivered into the Trust is void. Further, the
4 unrecorded assignments and in blank assignments are void.

5 Deutsche Bank has no secured interest based on the documents it has produced. "A void
6 instrument such as an undelivered or a forged deed does not convey anything and cannot be made
7 the foundation of a good title." *Montgomery v. Bank of America* (1948) 85 Cal.App.2d 559; *Trout*
8 *v. Taylor*, 220 Cal. 652, 656 [32 P.2d 968].

9 The Court should issue an order that Defendants have no lien on the Property.

10 **IV. CONCLUSION**

11 Defendants' defects in ownership of Debtor's Note and DOT are numerous, including no
12 Endorsement attached to the Claim, no compliance with the PSA/Trust, and no valid assignment of
13 the DOT. Based upon the above, the Motion should be denied in its entirety.

14
15 Dated: October 15, 2013

Respectfully submitted by:

GOE & FORSYTHE, LLP

17
18 By: /s/Robert P. Goe

19 Robert P. Goe, Attorneys for
20 Reorganized Debtor/Plaintiff Trudy
21 Kalush
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DECLARATION OF ROBERT P. GOE

I, Robert P. Goe, declare and state:

I am a partner in the law firm of Goe & Forsythe, LLP, attorneys for Reorganized Debtor, Trudy Kalush (“Debtor” or “Plaintiff”). I have personal knowledge of the facts alleged herein and if called upon as a witness, I could and would competently testify thereto.

1. True and correct copies of pages 1, 8, 9, 29, 30 and 36 of the Bean Deposition I conducted on December 20, 2012 are attached hereto as **Exhibit “14”**. Bean was produced by OWB as its PMK concerning Debtor’s loan.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: October 15, 2013

By: /s/Robert P. Goe
Robert P. Goe

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REQUEST FOR JUDICIAL NOTICE

Debtor, Trudy Kalush (“Debtor” or “Plaintiff”) hereby requests the Court take judicial notice pursuant to *Federal Rule of Evidence 201* of the following documents submitted in support of Plaintiff’s Opposition to Defendant’s Motion for Summary Judgment or, in the Alternative, Motion for Partial Summary Adjudication (“Motion”):

1. True and correct copies of the 15 assignments from Commercial to Indymac are attached to hereto as **Exhibit “15”**; and
2. True and correct copies of the Initial and Final Certifications of Trustee are attached hereto as **Exhibit “16”**.

Dated: October 15, 2013

Respectfully submitted by:

GOE & FORSYTHE, LLP

By: /s/Robert P. Goe
Robert P. Goe, Attorneys for
Reorganized Debtor/Plaintiff Trudy
Kalush

EXHIBIT 14

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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA, SANTA ANA DIVISION

- - -

In re)
)
TRUDY KALUSH,)
)
) No: 8:11-bk-19563-ES
Debtor and Debtor in)
Possession.)
_____)

DEPOSITION OF ONE WEST BANK
BY AND THROUGH CHARLES RAY BEAN
IRVINE, CALIFORNIA
DECEMBER 20, 2012

ATKINSON-BAKER, INC.
COURT REPORTERS
(800) 288-3376
www.depo.com

REPORTED BY: THERESA M. SILVA, CSR NO. 12895

FILE NO: A60BC8F

1 Is that like an "Inc." or an "LLP" or "LLC," if
2 you know?

3 A. I don't know. All I know is it's IndyMac
4 Mortgage Services, a division of One West Bank FSB.

5 Q. One West Bank FSB?

6 A. Right.

7 Q. So you don't know if IndyMac Mortgage Services
8 is like a separate legal entity from One West Bank?

9 A. I don't know that.

10 MS. RHIM: And I'm going to object. Calls for a
11 legal conclusion.

12 MR. GOE: That's fine.

13 BY MR. GOE:

14 Q. Let me show you the next what we're going to
15 mark as Exhibit 2.

16 (Debtor's Exhibit 2 was marked
17 for identification.)

18 BY MR. GOE:

19 Q. This is a proof of claim that was filed in
20 Ms. Kalush's bankruptcy case.

21 Have you ever seen this document before?

22 A. I have.

23 Q. Now, down at the bottom it states -- it's signed
24 by Michael B. Shaw, as creditor's authorized agent.

25 Do you see that?

1 A. I do.

2 Q. Who is Mr. Shaw?

3 A. I do not know.

4 Q. Now, are you the person at One West Bank who was
5 the most knowledgeable of the Kalush file?

6 MS. RHIM: I'm going to interpose an objection.
7 It calls for a legal conclusion. I also think the
8 question is vague and ambiguous.

9 The witness can answer if he can.

10 THE WITNESS: I would say that I am.

11 BY MR. GOE:

12 Q. And did you authorize Mr. Shaw to file this
13 proof of claim?

14 A. No, I did not.

15 Q. Have you ever spoken to Mr. Shaw?

16 A. No, I have not.

17 Q. The address there for One West Bank is
18 Kalamazoo, Michigan.

19 That is not where you work, is it?

20 A. No sir, it is not.

21 Q. What is your business address?

22 A. My business address is 2900 Esperanza Crossing,
23 in Austin, Texas, 78758.

24 Q. Now, why were you named as the person in
25 response to the deposition notice in Kalush?

1 with our situation here.

2 The witness can answer if he can.

3 THE WITNESS: Well, I mean, I review most of my
4 documents electronically, so that means they've been
5 scanned into our system.

6 So affixed, is that what you're asking me?

7 BY MR. GOE:

8 Q. Let me ask you another question.

9 Okay. Do you ever look at original loan files?
10 Original loan files, like paper copies of the documents,
11 like the original promissory note in paper?

12 Do you have files like that that you look at?

13 A. No, not in the current role that I'm in.

14 Q. Never?

15 A. Not in the current role that I'm in.

16 Back in '05, when I was in the mortgage division
17 of it, in the wholesale division, I would see those
18 things. But it was not specifically my job to process
19 them, if you will.

20 Q. Have you ever actually physically seen the
21 original Kalush promissory note?

22 MS. RHIM: I'm going to object. I think the
23 question's been asked and answered.

24 The witness can answer.

25 THE WITNESS: No, I have not seen the original.

1 No, I have not.

2 BY MR. GOE:

3 Q. Okay. So you wouldn't know then, obviously,
4 whether or not this endorsement was actually attached to
5 the note, the physical original note?

6 A. Correct.

7 Q. You would not?

8 A. I would not know.

9 Q. I'm going to show what you I'm going to mark as
10 Exhibit 5.

11 (Debtor's Exhibit 5 was marked
12 for identification.)

13 BY MR. GOE:

14 Q. You'll see at the bottom there, it states,
15 OWB Kalush 0115, which is a document your attorneys
16 produced.

17 Have you ever seen this document before?

18 A. Yes, I have.

19 Q. What is it?

20 A. It's an assignment of deed of trust.

21 Q. Now, if you look down right above where it says,
22 dated March 16th, 2013, [sic] it references a mortgage
23 loan purchase agreement.

24 Do you see that?

25 A. Right. Mortgage loan purchase agreement between

1 A. As the servicer for the trust, for Deutsche --
2 let's see. What is it? Deutsche Bank National Trust
3 Company, as trustee of the IndyMac Index Mortgage Loan
4 Trust 2005 AR12.

5 IndyMac Bank, IndyMac Federal and, down the
6 road, One West, was the servicer of the trust that this
7 loan is in. So they became the servicer, from my
8 understanding, in May of 2005 and have pretty much just
9 carried over all the way through today.

10 Q. Well, then how did Deutsche Bank National Trust
11 Company become the holder of this note and deed of trust?

12 MS. RHIM: I'm going to interpose the same
13 objections. And I'm also going to state that I believe
14 the witness has already testified with respect to the
15 PSA, which may be enlightening with respect to the
16 question.

17 But the witness can answer if he can.

18 THE WITNESS: Restate your question.

19 BY MR. GOE:

20 Q. How did Deutsche Bank become the owner of this
21 deed of trust?

22 A. I don't know specifically how they became the
23 owner to this loan. I don't know that.

24 Q. Okay. Do you know who Charles Boyle is?

25 A. I do.

EXHIBIT 15

67

PREPARED BY AND AFTER RECORDING MAIL TO:

Record and return to:
BRB Abstracting, Inc.
6412 S Howell Ave
Oak Creek, WI 53154

Recorded in Official Records, Orange County
Tom Daly, Clerk-Recorder

2005000752203 01:28pm 09/22/05
107 96 D11 2
0.00 0.00 0.00 0.00 3.00 0.00 0.00 0.00

INSTRUCTIONS TO COUNTY RECORDER

Index and file this instrument as (i) a Deed of Trust;
And (ii) a Fixture Filing covering goods which are
or are to become fixtures.

SPACE ABOVE THIS LINE FOR RECORDER'S USE

ASSIGNMENT OF DEED OF TRUST

Loan No. 0910914-1

FOR VALUE RECEIVED, the undersigned, Commercial Capital Bank, FSB, a federally chartered savings bank, ("Assignor"), hereby absolutely grants, assigns and transfers to IndyMac Bank, F.S.B. whose address is _____ ("Assignee"), all of Assignor's right, title and interest in, to, under and concerning the following: 155 N. Lake Ave Pasadena, CA 91101

That certain Deed of Trust dated December 23, 2004, executed by Tom Kingston and Suzanne Kingston, Husband and Wife, as Joint Tenants, as Trustor, for the benefit of Commercial Capital Bank, FSB, a federally chartered savings bank, as Beneficiary and recorded as Instrument No. 2005000003201 on January 4, 2005 in the Official Records of the County of Orange, California.

Together with any and all notes and contracts described or referred to in said Deed of Trust, all sums, including interest, due or to become due thereunder, and all rights accrued or to accrue thereunder.

The Assignment herein is made without any representation or warranty whatsoever except as may be expressly provided in that certain mortgage Loan Purchase Agreement between Assignor and Assignee, or documents, which are attached as exhibits thereto.

Dated: March 16, 2005

Commercial Capital Bank, FSB, a federally chartered savings bank

By: [Signature]
Name: Dale Schlering
Its: Vice President / Secondary Marketing Manager

State of California
County of Orange

On March 16, 2005 before my, Linh My Le, Notary Public personally appeared Dale Schlering,

personally known to me - OR - 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.

[Signature]
SIGNATURE OF NOTARY

I HEREBY CERTIFY THAT THIS IS
TRUE AND CORRECT COPY OF THE

RECORDED 9/22/05
INSTRUMENT NO. 752203
OF OFFICIAL RECORDS OF ORANGE
COUNTY CALIFORNIA
CHICAGO TITLE INSURANCE COMPANY.

2003-88777

Z:\Pool #8 INDYMAC\assignment_0910914-1.doc

EXHIBIT "A"

Real property in the City of Rancho Santa Margarita (Dove Canyon Area), County of Orange,
State of California, described as follows:

PARCEL 1:

LOT 16 OF TRACT NO. 13133, IN THE COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN
ON A MAP RECORDED IN BOOK 616, PAGES 32 TO 35 INCLUSIVE, OF MISCELLANEOUS MAPS,
RECORDS OF ORANGE COUNTY, CALIFORNIA, AND AS CORRECTED BY THAT CERTAIN
CERTIFICATE OF CORRECTION RECORDED MARCH 18, 1993 AS INSTRUMENT NO. 93-0182470
OF OFFICIAL RECORDS OF SAID ORANGE COUNTY.

EXCEPT THEREFROM TO ALL OIL, GAS, MINERALS, AND HYDROCARBONS BELOW A DEPTH OF
500 FEET, WITHOUT THE RIGHT OF SURFACE ENTRY, AS RESERVED IN INSTRUMENTS OF
RECORDS.

PARCEL 2:

A NON-EXCLUSIVE EASEMENT ON AND OVER THE COMMON AREA AS DEFINED IN THE
RESTATED MASTER DECLARATION OF RESTRICTIONS FOR TRABUCO CANYON RECORDED
AUGUST 2, 1988 AS INSTRUMENT NO. 88-376053 AND THAT CERTAIN NOTICE OF
DESIGNATION OF DELEGATE DISTRICT NO. 3 RECORDED MAY 2, 1989 AS INSTRUMENT NO.
89-232357, BOTH OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA, FOR ACCESS,
USE, OCCUPANCY, ENJOYMENT, INGRESS AND EGRESS TO THE AMENITIES LOCATED
THEREON. THIS EASEMENT IS APPURTENANT TO PARCEL 1 ABOVE DESCRIBED.

CERTIFIED
To be a true and correct copy of the
original document held in our files.
North Orange County Escrow Corp.

Exhibit A
ESTATE LENDING DEED OF TRUST - ADJUSTABLE INTEREST RATE

U:\LEGAL\ESTATE\MORTGAGE\BARRI.DOC

PREPARED BY AND AFTER RECORDING MAIL TO:

Record and return to:
BRB Abstracting, Inc.
6412 S Howell Ave
Oak Creek, WI 53154

Recorded in Official Records, Orange County
Tom Daly, Clerk-Recorder

2005000752204 01:28pm 09/22/05
107 96 D11 2
0.00 0.00 0.00 0.00 3.00 0.00 0.00 0.00

INSTRUCTIONS TO COUNTY RECORDER
Index and file this instrument as (i) a Deed of Trust;
And (ii) a Fixture Filing covering goods which are
or are to become fixtures.

SPACE ABOVE THIS LINE FOR RECORDER'S USE

ASSIGNMENT OF DEED OF TRUST

Loan No. 0910918-2

FOR VALUE RECEIVED, the undersigned, Commercial Capital Bank, FSB, a federally chartered savings bank, ("Assignor"), hereby absolutely grants, assigns and transfers to IndyMac Bank, F.S.B. whose address is _____ ("Assignee"), all of Assignor's right,

title and interest in, to, under and concerning the following: 155 N. Lake Ave Pasadena, CA 91101

That certain Deed of Trust dated December 29, 2004, executed by Brian F. Faulkner and Lanette B. Faulkner, Husband and Wife, as Community Property, as Trustor, for the benefit of Commercial Capital Bank, FSB, a federally chartered savings bank, as Beneficiary and recorded as Instrument No. 2005000052474 on January 21, 2005 in the Official Records of the County of Orange, California.

Together with any and all notes and contracts described or referred to in said Deed of Trust, all sums, including interest, due or to become due thereunder, and all rights accrued or to accrue thereunder.

The Assignment herein is made without any representation or warranty whatsoever except as may be expressly provided in that certain mortgage Loan Purchase Agreement between Assignor and Assignee, or documents, which are attached as exhibits thereto.

Dated: March 16, 2005

Commercial Capital Bank, FSB, a federally chartered savings bank

By: [Signature]
Name: Dale Schiering
Its: Vice President / Secondary Marketing Manager

State of California
County of Orange

On March 16, 2005 before my, Linh My Le, Notary Public personally appeared Dale Schiering,

personally known to me - OR - 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.

[Signature]
SIGNATURE OF NOTARY



WE HEREBY CERTIFY THAT THIS IS
A TRUE AND CORRECT COPY OF THE

RECORDED 9/22/05
INSTRUMENT NO. 752204
OF OFFICIAL RECORDS OF ORANGE
COUNTY CALIFORNIA
CHICAGO TITLE INSURANCE COMPANY.

120388778
Z:\Pool #6 INDYMAC\assignment_0910918-2.doc

Order No. 1847503

Exhibit "A"

Parcel 1:

Parcel A (Formerly Lot 200 of Tract 12954 and a portion of Lot 16 of Tract 11753) as shown on Exhibit "B" to that certain Lot line adjustment LL 99-12954-15, in the City of San Juan Capistrano, County of Orange, State of California, recorded February 9, 2000 as Instrument No. 20000074624 of Official Records

Excepting therefrom all oil, oil rights, minerals, mineral rights, natural gas rights, and other hydrocarbons by whatsoever name known, geothermal steam and other geothermal resources defined in California Public Resources Code Section 6903, et seq., that may be within or under the parcels of land hereinabove described, together with the perpetual rights of drilling, mining, exploring and operating therefor, and storing in and removing the same from said land or any other land, including the right to whipstock or directionally drill and mine from lands other than those hereinabove described, oil, or gas wells, tunnels and shafts into, through or across the subsurface of the land hereinabove described, and to bottom such whipstocked or directionally drilled wells, tunnels and shafts under and beneath or beyond the exterior limits thereof, and to re-drill, re-tunnel, equip, maintain, repair, deepen and operate any such wells or mines without, however, the right to drill, mine, store, explore and operate through the surface or the upper 500 feet of the subsurface of said land, as reserved in deed recorded December 23, 1988, Instrument No. 88-670298 of Official Records.

Parcel 2:

Easements as set forth in the Sections entitled "Easements for Owners", "Support, Settlement and Encroachment" and "Utilities and Cable Television" of the Article entitled "Easements and Rights" of the Declaration of Covenants, Conditions and Restrictions recorded May 6, 1988 as Instrument No. 88-211232 of Official Records of Orange County, California ("The Declaration"), as imposed by those certain Supplementary Declaration recorded as Instrument Nos. 88-221195, 88-221196 and 88-221197, all of said Official Records, and any amendments thereto.

67

PREPARED BY AND AFTER RECORDING MAIL TO:

Record and return to:
BRB Abstracting, Inc.
6412 S Howell Ave
Oak Creek, WI 53154

Recorded in Official Records, Orange County
Tom Daly, Clerk-Recorder

2005000752205 01:28pm 09/22/05
107 96 D11 2
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INSTRUCTIONS TO COUNTY RECORDER
Index and file this instrument as (i) a Deed of Trust;
And (ii) a Fixture Filing covering goods which are
or are to become fixtures.

SPACE ABOVE THIS LINE FOR RECORDER'S USE

ASSIGNMENT OF DEED OF TRUST

Loan No. 0910854-9

FOR VALUE RECEIVED, the undersigned, Commercial Capital Bank, FSB, a federally chartered savings bank, ("Assignor"), hereby absolutely grants, assigns and transfers to IndyMac Bank, F.S.B. whose address is _____ ("Assignee"), all of Assignor's right,

title and interest in, to, under and concerning the following: 155 N. Lake Ave Pasadena, CA 91101

That certain Deed of Trust dated December 15, 2004, executed by Arthur Bunzel, A Married Man as His Sole and Separate Property, as Trustor, for the benefit of Commercial Capital Bank, FSB, a federally chartered savings bank, as Beneficiary and recorded as Instrument No. 2004001130514 on December 21, 2004 in the Official Records of the County of Orange, California.

Together with any and all notes and contracts described or referred to in said Deed of Trust, all sums, including interest, due or to become due thereunder, and all rights accrued or to accrue thereunder.

The Assignment herein is made without any representation or warranty whatsoever except as may be expressly provided in that certain mortgage Loan Purchase Agreement between Assignor and Assignee, or documents, which are attached as exhibits thereto.

Dated: March 16, 2005. Commercial Capital Bank, FSB, a federally chartered savings bank

By: [Signature]
Name: Dale Schiering
Its: Vice President / Secondary Marketing Manager

State of California
County of Orange

On March 16, 2005 before my, Linh My Le, Notary Public personally appeared Dale Schiering,

personally known to me - OR - 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.

[Signature]
SIGNATURE OF NOTARY

WE HEREBY CERTIFY THAT THIS IS
A TRUE AND CORRECT COPY OF THE

RECORDED 9/22/05

INSTRUMENT NO. 752205
OF OFFICIAL RECORDS OF ORANGE
COUNTY CALIFORNIA
CHICAGO TITLE INSURANCE COMPANY.

120388760

Z:\Pool #8 INDYMAC\assignment_0910854-9.doc

EXHIBIT "A"

Parcel 1:

Lot 5 of Tract No. 7327, in the City of Laguna Beach, County of Orange, State of California, as per map recorded in book 505, page(s) 29, 30 and 31 of miscellaneous maps, in the Office of the County Recorder of said County.

Except therefrom all oil, gas, minerals and other hydrocarbons, below a depth of 500 feet, without the right of surface entry, as reserved in deeds of record.

Parcel 2:

Nonexclusive easements for access, ingress, egress, maintenance, repair, drainage, encroachment, support, and for other purposes, all as described in the Declaration.

CELESTINE MORTGAGE COMPANY, INC.
10000 WILSON AVENUE, SUITE 100
DANA POINT, CALIFORNIA 92629
Tel: 949.441.1111
Fax: 949.441.1112
www.celestine.com
Exhibit A
ESTATE LENDING DEED OF TRUST - ADJUSTABLE INTEREST RATE

G:\LEGAL\ESTATE\MORTGAGE\ARM DOC

67

PREPARED BY AND AFTER RECORDING MAIL TO:

Record and return to:
BRB Abstracting, Inc.
6412 S Howell Ave
Oak Creek, WI 53154

Recorded in Official Records, Orange County
Tom Daly, Clerk-Recorder

2005000752206 01:28pm 09/22/05
107 96 D11 2
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INSTRUCTIONS TO COUNTY RECORDER

Index and file this instrument as (i) a Deed of Trust;
And (ii) a Fixture Filing covering goods which are
or are to become fixtures.

SPACE ABOVE THIS LINE FOR RECORDER'S USE

ASSIGNMENT OF DEED OF TRUST

Loan No. 0910858-0

FOR VALUE RECEIVED, the undersigned, Commercial Capital Bank, FSB, a federally chartered savings bank, ("Assignor"), hereby absolutely grants, assigns and transfers to IndyMac Bank, F.S.B. whose address is _____ ("Assignee"), all of Assignor's right, title and interest in, to, under and concerning the following: **155 N. Lake Ave Pasadena, CA 91101**

That certain Deed of Trust dated December 31, 2004, executed by Ronald S. Klinge, An Unmarried Man, and Donald M. Downing, A Single Man, as Joint Tenants, as Trustor, for the benefit of Commercial Capital Bank, FSB, a federally chartered savings bank, as Beneficiary and recorded as Instrument No. 2005000035081 on January 14, 2005 in the Official Records of the County of Orange, California.

Together with any and all notes and contracts described or referred to in said Deed of Trust, all sums, including interest, due or to become due thereunder, and all rights accrued or to accrue thereunder.

The Assignment herein is made without any representation or warranty whatsoever except as may be expressly provided in that certain mortgage Loan Purchase Agreement between Assignor and Assignee, or documents, which are attached as exhibits thereto.

Dated: March 16, 2005

Commercial Capital Bank, FSB, a federally chartered savings bank

By: [Signature]
Name: Dale Schiering
Its: Vice President / Secondary Marketing Manager

State of California
County of Orange

On March 16, 2005 before my, Lin My Le, Notary Public personally appeared Dale Schiering,

personally known to me - OR - 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.
Lin My Le
SIGNATURE OF NOTARY

WE HEREBY CERTIFY THAT THIS IS
A TRUE AND CORRECT COPY OF THE
RECORDED 9/22/05
INSTRUMENT NO. 752206
OF OFFICIAL RECORDS OF ORANGE
COUNTY CALIFORNIA
CHICAGO TITLE INSURANCE COMPANY.

20388762
Z:\Pool #6 INDYMAC\assignment_0910858-0.doc

EXHIBIT "A"

LOT 9 AND THE SOUTHEASTERLY 1.00 FOOT OF THE SOUTHWESTERLY 28.33 FEET OF LOT
8 IN BLOCK J OF ARCH BEACH HEIGHTS ADDITION, IN THE CITY OF LAGUNA BEACH,
COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP RECORDED IN BOOK 7,
PAGE 22 OF MISCELLANEOUS MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID
COUNTY.

EXCEPTING THEREFROM THE NORTHWESTERLY 5.50 FEET OF THE NORTHEASTERLY 56.67
FEET OF SAID LOT 9.

CERTIFIED TO BE A TRUE AND
EXACT COPY OF THE ORIGINAL
COAST CITIES ESCROW

By

Taylor

Exhibit A
ESTATE LENDING DEED OF TRUST - ADJUSTABLE INTEREST RATE

57

PREPARED BY AND AFTER RECORDING MAIL TO:

Record and return to:
BRB Abstracting, Inc.
6412 S Howell Ave
Oak Creek, WI 53154

Recorded in Official Records, Orange County
Tom Daly, Clerk-Recorder

2005000752207 01:28pm 09/22/05

107 96 D11 2

0.00 0.00 0.00 0.00 3.00 0.00 0.00 0.00

INSTRUCTIONS TO COUNTY RECORDER

Index and file this instrument as (i) a Deed of Trust;
And (ii) a Fixture Filing covering goods which are
or are to become fixtures.

SPACE ABOVE THIS LINE FOR RECORDER'S USE

ASSIGNMENT OF DEED OF TRUST

Loan No. 0910908-3

FOR VALUE RECEIVED, the undersigned, Commercial Capital Bank, FSB, a federally chartered savings bank, ("Assignor"), hereby absolutely grants, assigns and transfers to IndyMac Bank, F.S.B. whose address is _____ ("Assignee"), all of Assignor's right, title and interest in, to, under and concerning the following:

155 N. Lake Ave Pasadena, CA 91101

That certain Deed of Trust dated December 29, 2004, executed by Stephen Wayne and Nellie Alcalde-Wayne, Husband and Wife, as Joint Tenants, as Trustor, for the benefit of Commercial Capital Bank, FSB, a federally chartered savings bank, as Beneficiary and recorded as Instrument No. 2004001159625 on December 30, 2004 in the Official Records of the County of Orange, California.

Together with any and all notes and contracts described or referred to in said Deed of Trust, all sums, including interest, due or to become due thereunder, and all rights accrued or to accrue thereunder.

The Assignment herein is made without any representation or warranty whatsoever except as may be expressly provided in that certain mortgage Loan Purchase Agreement between Assignor and Assignee, or documents, which are attached as exhibits thereto.

Dated: March 16, 2005

Commercial Capital Bank, FSB, a federally chartered savings bank

By: [Signature]
Name: Dale Schlering
Its: Vice President / Secondary Marketing Manager

State of California
County of Orange

On March 16, 2005 before my, Linh My Le, Notary Public personally appeared Dale Schlering,

personally known to me - OR - 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.

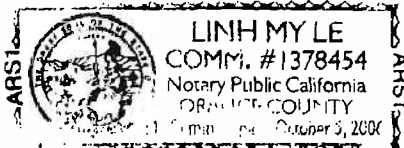
WITNESS my hand and official seal.

[Signature]
SIGNATURE OF NOTARY

WE HEREBY CERTIFY THAT THIS IS
A TRUE AND CORRECT COPY OF THE

RECORDED 9/22/05

INSTRUMENT NO. 752207
OF OFFICIAL RECORDS OF ORANGE
COUNTY CALIFORNIA
CHICAGO TITLE INSURANCE COMPANY.



20388775
Assignment_CCB.doc 03/11/2005

EXHIBIT "A"

All that certain real property situated in the County of Orange, State of California, described as follows:

PARCEL 1:

Lot 43 of Tract No. 11153, as shown on a map recorded in book 502, page(s) 13 to 19 inclusive, of Miscellaneous Maps, in the office of the County Recorder of said County.

EXCEPTING therefrom all minerals, oil, gas, petroleum, other hydrocarbon substances and all underground water in or under or which may be produced from said land which underlies a plane parallel to and 550 feet below the present surface of said land for the purpose of prospecting for, the exploration, development, production, extraction and taking of said minerals, oil, gas, petroleum, other hydrocarbon substances and water from said land, by means of mines, wells, derricks and/or other equipment from surface locations on adjoining or neighboring land or lying outside of the above described land, it being understood that the owner of such minerals, oil, gas, petroleum, other hydrocarbon substances and water, as set forth above, shall have no right to enter upon the surface of the above described land nor to use any of the said land or any portion thereof above said plane parallel to and 550 feet below the present surface of the said land for any purpose whatsoever, as reserved in the deed from Pacific Mutual Life Insurance Company, a California corporation, recorded August 1, 1986 as Instrument No. 86-336682 of Official Records.

PARCEL 2:

Non-exclusive easements for access, ingress and egress, maintenance, repair, drainage, encroachment, support and for other purposes all as described in the Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Lantern Bay Estates ("Declaration") recorded on March 24, 1983 as Instrument No. 83-124265, as amended by a First Amendment to the Declaration recorded on April 12, 1983 as Instrument No. 83-151659, as amended by a Second Amendment to Declaration recorded as Instrument No. 83-321347, all in Official Records of Orange County, California, and any amendments thereto.

Exhibit A
ESTATE LENDING DEED OF TRUST - ADJUSTABLE INTEREST RATE

0:\LEGAL\ESTATE\MORTGAGE\BARM.DOC

I hereby certify that this is a true and exact copy of the original Executed Escrow Company
By: _____

67

PREPARED BY AND AFTER RECORDING MAIL TO:

Record and return to:
BRB Abstracting, Inc.
6412 S Howell Ave
Oak Creek, WI 53154

Recorded in Official Records, Orange County
Tom Daly, Clerk-Recorder

9.00

2005000752208 01:28pm 09/22/05

107 96 D11 2
0.00 0.00 0.00 0.00 3.00 0.00 0.00 0.00

INSTRUCTIONS TO COUNTY RECORDER
Index and file this instrument as (i) a Deed of Trust;
And (ii) a Fixture Filing covering goods which are
or are to become fixtures.

SPACE ABOVE THIS LINE FOR RECORDER'S USE

ASSIGNMENT OF DEED OF TRUST

Loan No. 0910945-5

FOR VALUE RECEIVED, the undersigned, Commercial Capital Bank, FSB, a federally chartered savings bank, ("Assignor"), hereby absolutely grants, assigns and transfers to IndyMac Bank, F.S.B. whose address is

title and interest in, to, under and concerning the following: 155 N. Lake Ave Pasadena, CA 91101

That certain Deed of Trust dated January 11, 2005, executed by James Colello and Michele J. Colello, Husband and Wife, as Community Property, as Trustor, for the benefit of Commercial Capital Bank, FSB, a federally chartered savings bank, as Beneficiary and recorded as Instrument No. 2005000045429 on January 20, 2005 in the Official Records of the County of Orange, California.

Together with any and all notes and contracts described or referred to in said Deed of Trust, all sums, including interest, due or to become due thereunder, and all rights accrued or to accrue thereunder.

The Assignment herein is made without any representation or warranty whatsoever except as may be expressly provided in that certain mortgage Loan Purchase Agreement between Assignor and Assignee, or documents, which are attached as exhibits thereto.

Dated: March 16, 2005

Commercial Capital Bank, FSB, a federally chartered savings bank

By: [Signature]
Name: Dale Schlering
Its: Vice President / Secondary Marketing Manager

State of California
County of Orange

On March 16, 2005 before my, John A. Ridenour, Notary Public personally appeared Dale Schlering,

personally known to me - OR - 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.

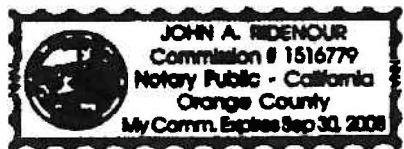
WE HEREBY CERTIFY THAT THIS IS
A TRUE AND CORRECT COPY OF THE

RECORDED 9/22/05

INSTRUMENT NO. 752208
OFFICIAL RECORDS OF ORANGE
COUNTY CALIFORNIA
CHICAGO TITLE INSURANCE COMPANY.

WITNESS my hand and official seal.

[Signature]
SIGNATURE OF NOTARY




120388786

Z:\Pool #8 INDYMAC\assignment_0910945-5.doc

EXHIBIT "A"

PARCEL 1:

 AB
LOT 52 OF TRACT 13066, IN THE CITY OF LAGUNA NIGUEL, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP RECORDED IN BOOK 586, PAGES 14 THROUGH 18 INCLUSIVE, OF MISCELLANEOUS PLATS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL 2:

NON-EXCLUSIVE EASEMENTS FOR INGRESS, EGRESS, MAINTENANCE, REPAIR, DRAINAGE, ENCROACHMENT, AND FOR OTHER PURPOSES, ALL AS DESCRIBED IN THE MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS FOR COUNTRY VILLAGE RECORDED JUNE 4, 1981 IN BOOK 14086, PAGE 195, AND IN THE FIRST AMENDMENT TO MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS FOR COUNTRY VILLAGE RECORDED AUGUST 6, 1981 IN BOOK 14170, PAGE 1482 (COLLECTIVELY THE "MASTER DECLARATION"), THE SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS FOR VILLAGE NIGUEL HEIGHTS RECORDED FEBRUARY 25, 1987 AS INSTRUMENT NO. 87-106319, AND IN THE FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS FOR VILLAGE NIGUEL HEIGHTS RECORDED AUGUST 19, 1987 AS INSTRUMENT NO. 87-469649 (COLLECTIVELY THE "DECLARATION"), AND IN THE NOTICE OF ADDITION OF TERRITORY TO COUNTRY VILLAGE AND SUPPLEMENTAL DECLARATION FOR VILLAGE NIGUEL HEIGHTS RECORDED NOVEMBER 13, 1987 AS INSTRUMENT NO. 87-642232 ("NOTICE") ALL OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA.

Exhibit A

PREPARED BY AND AFTER RECORDING MAIL TO:

Record and return to:
BRB Abstracting, Inc.
6412 S Howell Ave
Oak Creek, WI 53154

Recorded in Official Records, Orange County
Tom Daly, Clerk-Recorder

2005000752209 01:28pm 09/22/05
107 96 D11 2
0.00 0.00 0.00 0.00 3.00 0.00 0.00 0.00

INSTRUCTIONS TO COUNTY RECORDER

Index and file this instrument as (i) a Deed of Trust;
And (ii) a Fixture Filing covering goods which are
or are to become fixtures.

SPACE ABOVE THIS LINE FOR RECORDER'S USE

ASSIGNMENT OF DEED OF TRUST

Loan No. 0910948-9

FOR VALUE RECEIVED, the undersigned, Commercial Capital Bank, FSB, a federally chartered savings bank, ("Assignor"), hereby absolutely grants, assigns and transfers to IndyMac Bank, F.S.B. whose address is _____ ("Assignee"), all of Assignor's right,

title and interest in, to, under and concerning the following: 155 N. Lake Ave Pasadena, CA 91101

That certain Deed of Trust dated January 19, 2005, executed by Leslie T. Fields and Katrina J. Fields, Husband and Wife, as Joint Tenants, as Trustor, for the benefit of Commercial Capital Bank, FSB, a federally chartered savings bank, as Beneficiary and recorded as Instrument No. 2005000057152 on January 24, 2005 in the Official Records of the County of Orange, California.

Together with any and all notes and contracts described or referred to in said Deed of Trust, all sums, including interest, due or to become due thereunder, and all rights accrued or to accrue thereunder.

The Assignment herein is made without any representation or warranty whatsoever except as may be expressly provided in that certain mortgage Loan Purchase Agreement between Assignor and Assignee, or documents, which are attached as exhibits thereto.

Dated: March 16, 2005

Commercial Capital Bank, FSB, a federally chartered savings bank

By: [Signature]
Name: Dale Schiering
Its: Vice President / Secondary Marketing Manager

State of California
County of Orange

On March 16, 2005 before me, John A. Ridenour, Notary Public personally appeared Dale Schiering,

personally known to me - OR - 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.

WE HEREBY CERTIFY THAT THIS IS
A TRUE AND CORRECT COPY OF THE

RECORDED 9/22/05

INSTRUMENT NO. 752209
OF OFFICIAL RECORDS OF ORANGE
COUNTY CALIFORNIA
BY TITLE INSURANCE COMPANY

WITNESS my hand and official seal.

[Signature]
SIGNATURE OF NOTARY



00308787
Z:\Pool #6 INDYMAC\assignment_0910948-9.doc

Order No. 49022740

EXHIBIT "ONE"

**Lot 31 in Block 30, of Newport Beach, in the City of Newport Beach, County of Orange,
State of California, as shown on a map thereof recorded in Book 3, Page 8 of
Miscellaneous Maps, in the office of the County Recorder of said County.**

Assessor's Parcel No: 047-082-19

h

PREPARED BY AND AFTER RECORDING MAIL TO:

Record and return to:
BRB Abstracting, Inc.
6412 S Howell Ave
Oak Creek, WI 53154

Recorded in Official Records, Orange County
Tom Daly, Clerk-Recorder



2005000752210 01:28pm 09/22/05

107 96 D11 2
0.00 0.00 0.00 0.00 3.00 0.00 0.00 0.00

INSTRUCTIONS TO COUNTY RECORDER
Index and file this instrument as (i) a Deed of Trust;
And (ii) a Fixture Filing covering goods which are
or are to become fixtures.

SPACE ABOVE THIS LINE FOR RECORDER'S USE

ASSIGNMENT OF DEED OF TRUST

Loan No. 0910958-8

FOR VALUE RECEIVED, the undersigned, Commercial Capital Bank, FSB, a federally chartered savings bank, ("Assignor"), hereby absolutely grants, assigns and transfers to IndyMac Bank, F.S.B. whose address is _____ ("Assignee"), all of Assignor's right, title and interest in, to, under and concerning the following: **155 N. Lake Ave Pasadena, CA 91101**

K
Jr

That certain Deed of Trust dated January 21, 2005, executed by David J. Stromswold, A Married Man as His Sole and Separate Property, as Trustor, for the benefit of Commercial Capital Bank, FSB, a federally chartered savings bank, as Beneficiary and recorded as Instrument No. 2005000077594 on January 31, 2005 in the Official Records of the County of Orange, California.

Together with any and all notes and contracts described or referred to in said Deed of Trust, all sums, including interest, due or to become due thereunder, and all rights accrued or to accrue thereunder.

The Assignment herein is made without any representation or warranty whatsoever except as may be expressly provided in that certain mortgage Loan Purchase Agreement between Assignor and Assignee, or documents, which are attached as exhibits thereto.

Dated: March 16, 2005

Commercial Capital Bank, FSB, a federally chartered savings bank

By:
Name: Dale Schiering
Its: Vice President / Secondary Marketing Manager

State of California
County of Orange

On March 16, 2005 before my, John A. Ridenour, Notary Public personally appeared Dale Schiering,

personally known to me - OR - 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.

SIGNATURE OF NOTARY

WE HEREBY CERTIFY THAT THIS IS
A TRUE AND CORRECT COPY OF THE

RECORDED 9/22/05
INSTRUMENT NO. 752210
OF OFFICIAL RECORDS OF ORANGE
COUNTY CALIFORNIA
CHICAGO TITLE INSURANCE COMPANY



00388789
Z:\Pool #6 INDYMAC\assignment_0910958-8.doc

EXHIBIT "A"

Lot 71 of Tract No. 13150, in the Dove Canyon Area, County of Orange, State of California, as per map recorded in Book 643, Pages 43 through 48 inclusive of Miscellaneous Maps, in the office of the County Recorder of said County.

EXCEPT THEREFROM all oil, gas, minerals and hydrocarbons, below a depth of 500 feet, without the right of surface entry, as reserved in instruments of record.

Exhibit A
ESTATE LENDING DEED OF TRUST - ADJUSTABLE INTEREST RATE

C:\LEGAL\STATE\MORTGAGE\ARM DOC

PREPARED BY AND AFTER RECORDING MAIL TO:

Record and return to:
BRB Abstracting, Inc.
6412 S Howell Ave
Oak Creek, WI 53154

Recorded in Official Records, Orange County
Tom Daly, Clerk-Recorder

2005000752211 01:28pm 09/22/05
107 96 D11 2
0.00 0.00 0.00 0.00 3.00 0.00 0.00 0.00

INSTRUCTIONS TO COUNTY RECORDER
Index and file this instrument as (i) a Deed of Trust;
And (ii) a Fixture Filing covering goods which are
or are to become fixtures.

SPACE ABOVE THIS LINE FOR RECORDER'S USE

ASSIGNMENT OF DEED OF TRUST

Loan No. 0910968-7

FOR VALUE RECEIVED, the undersigned, Commercial Capital Bank, FSB, a federally chartered savings bank, ("Assignor"), hereby absolutely grants, assigns and transfers to IndyMac Bank, F.S.B. whose address is _____ ("Assignee"), all of Assignor's right,

title and interest in, to, under and concerning the following: **155 N. Lake Ave Pasadena, CA 91101**

That certain Deed of Trust dated February 7, 2005, executed by Judy S. Gray, An Unmarried Woman, as Trustor, for the benefit of Commercial Capital Bank, FSB, a federally chartered savings bank, as Beneficiary and recorded as Instrument No. 2005000114614 on February 14, 2005 in the Official Records of the County of Orange, California.

Together with any and all notes and contracts described or referred to in said Deed of Trust, all sums, including interest, due or to become due thereunder, and all rights accrued or to accrue thereunder.

The Assignment herein is made without any representation or warranty whatsoever except as may be expressly provided in that certain mortgage Loan Purchase Agreement between Assignor and Assignee, or documents, which are attached as exhibits thereto.

Dated: March 16, 2005

Commercial Capital Bank, FSB, a federally chartered savings bank

By: [Signature]
Name: Dale Schiering
Its: Vice President / Secondary Marketing Manager

State of California
County of Orange

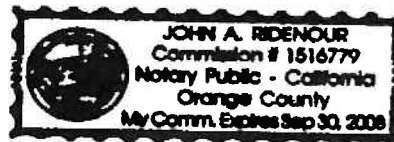
On March 16, 2005 before my, John A. Ridenour, Notary Public personally appeared Dale Schiering,

personally known to me - OR - 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.

CERTIFY THAT THIS IS
THE CORRECT COPY OF THE
RECORDED: 9/22/05
752211
INSTRUMENT NO.
OF OFFICIAL RECORDS OF ORANGE
COUNTY CALIFORNIA
CHICAGO TITLE INSURANCE COMPANY.

WITNESS my hand and official seal.

[Signature]
SIGNATURE OF NOTARY



20388792

Z:\Pool #6 INDYMAC\assignment_0910968-7.doc

EXHIBIT "A"

Parcel 1:

Lot 8 of tract no. 2771, in the City of Laguna Beach, County of Orange, State of California, as per map recorded in book 88, page(s) 6 and 7 of miscellaneous maps, in the office of the County Recorder of said County.

Parcel 2:

That portion of Lot A of tract no. 2771, in the City of Laguna Beach, as per map recorded in book 88, page(s) 6 and 7 of miscellaneous maps, in the office of the County Recorder of said County, lying between the Westerly prolongation of the Northerly and Southerly lines of Lot 8 of said tract no. 2771

Except therefrom all oil, gas, minerals and other hydrocarbons, below a depth of 500 feet, without the right of surface entry, as reserved in deeds of record.

Also except any portion of said Lot A lying outside of the patent lines of the Rancho San Joaquin, as such lines existed at the time of the issuance of the patent, which was not formed by the deposit of alluvion from natural causes and by imperceptible degrees

Exhibit A
ESTATE LENDING DEED OF TRUST - ADJUSTABLE INTEREST RATE

3-LEGAL-STATE-MORTGAGE-FARM.DOC

67

PREPARED BY AND AFTER RECORDING MAIL TO:

Record and return to:
BRB Abstracting, Inc.
6412 S Howell Ave
Oak Creek, WI 53154

Recorded in Official Records, Orange County
Tom Daly, Clerk-Recorder

9.00

2005000752212 01:28pm 09/22/05

107 96 D11 2

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INSTRUCTIONS TO COUNTY RECORDER

index and file this instrument as (I) a Deed of Trust;
And (II) a Fixture Filing covering goods which are
or are to become fixtures.

SPACE ABOVE THIS LINE FOR RECORDER'S USE

ASSIGNMENT OF DEED OF TRUST

Loan No. 0910970-3

FOR VALUE RECEIVED, the undersigned, Commercial Capital Bank, FSB, a federally chartered savings bank, ("Assignor"), hereby absolutely grants, assigns and transfers to IndyMac Bank, F.S.B. whose address is _____ ("Assignee"), all of Assignor's right,

title and interest in, to, under and concerning the following:

155 N. Lake Ave Pasadena, CA 91101

That certain Deed of Trust dated January 25, 2005, executed by Steven L. Wexler and Alisha A. Wexler, Husband and Wife, as Joint Tenants, as Trustor, for the benefit of Commercial Capital Bank, FSB, a federally chartered savings bank, as Beneficiary and recorded as Instrument No. 2005000076607 on January 31, 2005 in the Official Records of the County of Orange, California.

Together with any and all notes and contracts described or referred to in said Deed of Trust, all sums, including interest, due or to become due thereunder, and all rights accrued or to accrue thereunder.

The Assignment herein is made without any representation or warranty whatsoever except as may be expressly provided in that certain mortgage Loan Purchase Agreement between Assignor and Assignee, or documents, which are attached as exhibits thereto.

Dated: March 16, 2005

Commercial Capital Bank, FSB, a federally chartered savings bank

By:

Name: Dale Schiering

Its: Vice President / Secondary Marketing Manager

State of California
County of Orange

On March 16, 2005 before my, John A. Ridenour, Notary Public personally appeared Dale Schiering,

personally known to me - OR - 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.

SIGNATURE OF NOTARY

I HEREBY CERTIFY THAT THIS IS
TRUE AND CORRECT COPY OF THE

RECORDED 9/22/05

INSTRUMENT NO. 752212
OF OFFICIAL RECORDS OF ORANGE
COUNTY CALIFORNIA
CHICAGO TITLE INSURANCE COMPANY.

20388793

2:1Pool #6 INDYMACassignment_0910970-3.doc

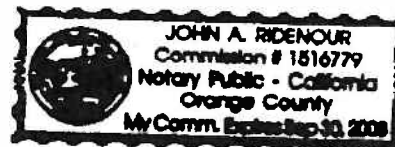


EXHIBIT "A"

Lot 44 of Tract No. 6243, in the City of Mission Viejo, County of Orange, State of California, as per map recorded in book 227, pages 35 to 38 inclusive of miscellaneous maps, in the office of the County Recorder of said County.

Except therefrom all oil, gas, minerals and other hydrocarbons, below a depth of 500 feet, without the right of surface entry, as reserved in deeds of record.

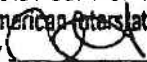
CERTIFIED TO BE A TRUE AND
EXACT COPY OF THE ORIGINAL
American Interstate Escrow
by 

Exhibit A

ESTATE LENDING DEED OF TRUST - ADJUSTABLE INTEREST RATE

0018CALSTATEMORTGAGEBANK.DOC

PREPARED BY AND AFTER RECORDING MAIL TO:

Record and return to:
BRB Abstracting, Inc.
6412 S Howell Ave
Oak Creek, WI 53154

Recorded in Official Records, Orange County
Tom Daly, Clerk-Recorder

2005000752213 01:28pm 09/22/05
107 96 D11 2
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INSTRUCTIONS TO COUNTY RECORDER
Index and file this instrument as (i) a Deed of Trust;
And (ii) a Fixture Filing covering goods which are
or are to become fixtures.

SPACE ABOVE THIS LINE FOR RECORDER'S USE

ASSIGNMENT OF DEED OF TRUST

Loan No. 0911013-1

FOR VALUE RECEIVED, the undersigned, Commercial Capital Bank, FSB, a federally chartered savings bank, ("Assignor"), hereby absolutely grants, assigns and transfers to IndyMac Bank, F.S.B. whose address is _____ ("Assignee"), all of Assignor's right,

title and interest in, to, under and concerning the following: 155 N. Lake Ave Pasadena, CA 91101

That certain Deed of Trust dated February 22, 2005, executed by Jerold R. Palazzo and Van D. Palazzo, Husband and Wife, as Joint Tenants, as Trustor, for the benefit of Commercial Capital Bank, FSB, a federally chartered savings bank, as Beneficiary and recorded as Instrument No. 2005000150487 on March 1, 2005 in the Official Records of the County of Orange, California.

Together with any and all notes and contracts described or referred to in said Deed of Trust, all sums, including interest, due or to become due thereunder, and all rights accrued or to accrue thereunder.

The Assignment herein is made without any representation or warranty whatsoever except as may be expressly provided in that certain mortgage Loan Purchase Agreement between Assignor and Assignee, or documents, which are attached as exhibits thereto.

Dated: March 16, 2005

Commercial Capital Bank, FSB, a federally chartered savings bank

By: [Signature]
Name: Dale Schiering
Its: Vice President / Secondary Marketing Manager

State of California
County of Orange

On March 16, 2005 before my, John A. Ridenour, Notary Public personally appeared Dale Schiering,

personally known to me - OR - 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.

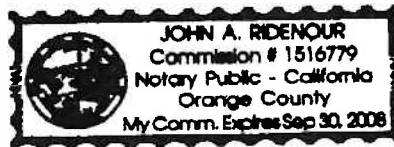
WITNESSE my hand and official seal.

[Signature]
SIGNATURE OF NOTARY

HEREBY CERTIFY THAT THIS IS
A TRUE AND CORRECT COPY OF THE

RECORDED: 9/22/05

INSTRUMENT NO. 752213
OF OFFICIAL RECORDS OF ORANGE
COUNTY CALIFORNIA
LAND COMPANY



20380807
Assignment_CCB.doc 03/11/2005

EXHIBIT "A"

All that certain real property situated in the County of Orange, State of California, described as follows:

Parcel 5 as shown on Exhibit "B" of Lot Line Adjustment 2003-022 recorded March 12, 2004 as Instrument No. 2004-205523 of Official Records of Orange County, in the City of Santa Ana.

Assessor's Parcel Number: **503-671-15**

67

PREPARED BY AND AFTER RECORDING MAIL TO:

Record and return to:
BRB Abstracting, Inc.
6412 S Howell Ave
Oak Creek, WI 53154

Recorded in Official Records, Orange County
Tom Daly, Clerk-Recorder

RECORDED 9.00

2005000752214 01:28pm 09/22/05

107 96 D11 2
0.00 0.00 0.00 0.00 3.00 0.00 0.00 0.00

INSTRUCTIONS TO COUNTY RECORDER
Index and file this instrument as (i) a Deed of Trust;
And (ii) a Fixture Filing covering goods which are
or are to become fixtures.

SPACE ABOVE THIS LINE FOR RECORDER'S USE

ASSIGNMENT OF DEED OF TRUST

Loan No. 0911011-5

FOR VALUE RECEIVED, the undersigned, Commercial Capital Bank, FSB, a federally chartered savings bank, ("Assignor"), hereby absolutely grants, assigns and transfers to IndyMac Bank, F.S.B. whose address is _____ ("Assignee"), all of Assignor's right,

title and interest in, to, under and concerning the following: 155 N. Lake Ave Pasadena, CA 91101

That certain Deed of Trust dated February 15, 2005, executed by Joey Regios, A Single Man, as Trustor, for the benefit of Commercial Capital Bank, FSB, a federally chartered savings bank, as Beneficiary and recorded as Instrument No. 2005000150704 on March 1, 2005 in the Official Records of the County of Orange, California.

Together with any and all notes and contracts described or referred to in said Deed of Trust, all sums, including interest, due or to become due thereunder, and all rights accrued or to accrue thereunder.

The Assignment herein is made without any representation or warranty whatsoever except as may be expressly provided in that certain mortgage Loan Purchase Agreement between Assignor and Assignee, or documents, which are attached as exhibits thereto.

Dated: March 16, 2005

Commercial Capital Bank, FSB, a federally chartered savings bank

By: [Signature]
Name: Dale Schlering
Its: Vice President / Secondary Marketing Manager

State of California
County of Orange

On March 16, 2005 before my, John A. Ridenour, Notary Public personally appeared Dale Schlering,

personally known to me -- OR - 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.

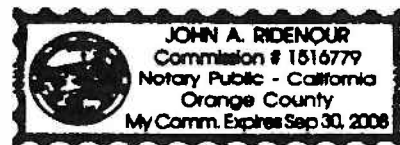
[Signature]
SIGNATURE OF NOTARY

I HEREBY CERTIFY THAT THIS IS
TRUE AND CORRECT COPY OF THE

RECORDED 9/22/05

INSTRUMENT NO. 752214

OFFICIAL RECORDS OF ORANGE
COUNTY
COMMERCIAL BANK AND TRUST COMPANY



2005000752214

Assignment_CCB.doc 03/11/2005

EXHIBIT "A"

Lot(s) 48 of Tract No. 5803, in the City of Lake Forest, County of Orange, State of California, as per map recorded in Book 212 Page(s) 1 to 6 of Miscellaneous Maps, in the office of the County Recorder of said County.

EXCEPT therefrom all oil, gas, minerals, and other hydrocarbon substances lying below a depth of 500 feet, but with no right of surface entry, as provided in deeds of record.

Exhibit A
ESTATE LENDING DEED OF TRUST - ADJUSTABLE INTEREST RATE

0:\LEGAL\ESTATE\MORTGAGE\W\N\DOC

5

PREPARED BY AND AFTER RECORDING MAIL TO:

Record and return to:
BRB Abstracting, Inc.
6412 S Howell Ave
Oak Creek, WI 53154

Recorded in Official Records, Orange County
Tom Daly, Clerk-Recorder
2005000752215 01:28pm 09/22/05
107 98 D11 2
0.00 0.00 0.00 0.00 3.00 0.00 0.00 0.00

INSTRUCTIONS TO COUNTY RECORDER
Index and file this instrument as (i) a Deed of Trust;
And (ii) a Fixture Filing covering goods which are
or are to become fixtures.

SPACE ABOVE THIS LINE FOR RECORDER'S USE

ASSIGNMENT OF DEED OF TRUST

Loan No. 0911010-7

FOR VALUE RECEIVED, the undersigned, Commercial Capital Bank, FSB, a federally chartered savings bank, ("Assignor"), hereby absolutely grants, assigns and transfers to IndyMac Bank, FSB whose address is _____ ("Assignee"), all of Assignor's right, title and interest in, to, under and concerning the following: **155 N. Lake Ave Pasadena, CA 91101**

That certain Deed of Trust dated February 10, 2005, executed by Cheryl Manbeck, An Unmarried Woman and Janis J. Agopian, A Married Woman as Her Sole and Separate Property, each as to an undivided 50% interest, as tenants in common, as Trustor, for the benefit of Commercial Capital Bank, FSB, a federally chartered savings bank, as Beneficiary and recorded as Instrument No. 2005000122720 on February 16, 2005 in the Official Records of the County of Orange, California.

Together with any and all notes and contracts described or referred to in said Deed of Trust, all sums, including interest, due or to become due thereunder, and all rights accrued or to accrue thereunder.

The Assignment herein is made without any representation or warranty whatsoever except as may be expressly provided in that certain mortgage Loan Purchase Agreement between Assignor and Assignee, or documents, which are attached as exhibits thereto.

Dated: March 16, 2005

Commercial Capital Bank, FSB, a federally chartered savings bank

By: [Signature]
Name: Dale Schiering
Its: Vice President / Secondary Marketing Manager

State of California
County of Orange

On March 16, 2005 before me, John A. Ridenour, Notary Public personally appeared Dale Schiering,

personally known to me - OR - 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.

CERTIFY THAT THIS IS
A TRUE AND CORRECT COPY OF THE

RECORDED 9/22/05

INSTRUMENT NO. 752215
OFFICIAL RECORDS OF ORANGE
COUNTY CALIFORNIA
NOTARY PUBLIC INSURANCE COMPANY.

WITNESS my hand and official seal.

[Signature]
SIGNATURE OF NOTARY



20388805
Assignment_CCB.doc 03/11/2005

EXHIBIT "A"

LOT 9 OF TRACT NO. 6634, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP THEREOF RECORDED IN BOOK 248, PAGES 18 TO 25 INCLUSIVE, MISCELLANEOUS MAPS, RECORDS OF SAID ORANGE COUNTY.

THIS IS CERTIFIED TO BE A
TRUE AND EXACT COPY OF
THE ORIGINAL

Exhibit A
ESTATE LENDING DEED OF TRUST - ADJUSTABLE INTEREST RATE

[Handwritten Signature]

0:\LEGAL\ESTATE\MORTGAGE\RM.DOC

5

PREPARED BY AND AFTER RECORDING MAIL TO:

Record and return to:
BRB Abstracting, Inc.
6412 S Howell Ave
Oak Creek, WI 53154

Recorded in Official Records, Orange County
Tom Daly, Clerk-Recorder

9.00
2005000752216 01:28pm 09/22/05
107 96 D11 2
0.00 0.00 0.00 0.00 3.00 0.00 0.00 0.00

INSTRUCTIONS TO COUNTY RECORDER

Index and file this instrument as (i) a Deed of Trust;
And (ii) a Fixture Filing covering goods which are
or are to become fixtures.

SPACE ABOVE THIS LINE FOR RECORDER'S USE

ASSIGNMENT OF DEED OF TRUST

Loan No. 0910992-7

FOR VALUE RECEIVED, the undersigned, Commercial Capital Bank, FSB, a federally chartered savings bank, ("Assignor"), hereby absolutely grants, assigns and transfers to IndyMac Bank, F.S.B. whose address is

title and interest in, to, under and concerning the following: 155 N. Lake Ave Pasadena, CA 91101 ("Assignee"), all of Assignor's right,

That certain Deed of Trust dated February 2, 2005, executed by Kimberly O'Brien, An Unmarried Woman, as Trustor, for the benefit of Commercial Capital Bank, FSB, a federally chartered savings bank, as Beneficiary and recorded as Instrument No. 2005000106315 on February 9, 2005 in the Official Records of the County of Orange, California.

Together with any and all notes and contracts described or referred to in said Deed of Trust, all sums, including interest, due or to become due thereunder, and all rights accrued or to accrue thereunder.

The Assignment herein is made without any representation or warranty whatsoever except as may be expressly provided in that certain mortgage Loan Purchase Agreement between Assignor and Assignee, or documents, which are attached as exhibits thereto.

Dated: March 16, 2005

Commercial Capital Bank, FSB, a federally chartered savings bank

By: [Signature]
Name: Dale Schiering
Its: Vice President / Secondary Marketing Manager

State of California
County of Orange

On March 16, 2005 before my, John A. Ridenour, Notary Public personally appeared Dale Schiering,

personally known to me - OR - 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.

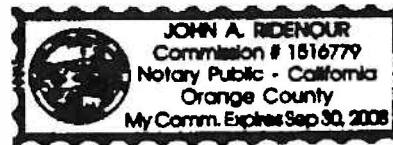
I HEREBY CERTIFY THAT THIS IS
TRUE AND CORRECT COPY OF THE

RECORDED: 9/22/05

INSTRUMENT NO. 752216
OF OFFICIAL RECORDS OF ORANGE
COUNTY CALIFORNIA
CHICAGO TITLE INSURANCE COMPANY.

WITNESS my hand and official seal.

[Signature]
SIGNATURE OF NOTARY



50388801

Assignment_CCB.doc 03/11/2005

EXHIBIT "A"

Lots 2, 3 and 4 in Block 51 of Arch Beach Heights, as per map recorded in book 7, page(s) 9 and 10 of miscellaneous maps, in the office of the County Recorder of said County.

K-0-

Exhibit A
ESTATE LENDING DEED OF TRUST -- ADJUSTABLE INTEREST RATE

\\LEGAL\ESTATE\MORTGAGE\WAM DOC

PREPARED BY AND AFTER RECORDING MAIL TO:

Record and return to:
BRB Abstracting, Inc.
6412 S Howell Ave
Oak Creek, WI 53154

Recorded in Official Records, Orange County
Tom Daly, Clerk-Recorder



2005000752217 01:28pm 09/22/05

107 96 D11 2
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INSTRUCTIONS TO COUNTY RECORDER

Index and file this instrument as (i) a Deed of Trust;
And (ii) a Fixture Filing covering goods which are
or are to become fixtures.

SPACE ABOVE THIS LINE FOR RECORDER'S USE

ASSIGNMENT OF DEED OF TRUST

Loan No. 0911030-5

FOR VALUE RECEIVED, the undersigned, Commercial Capital Bank, FSB, a federally chartered savings bank, ("Assignor"), hereby absolutely grants, assigns and transfers to LadyMac Bank, F.S.B. whose address is _____ ("Assignee"), all of Assignor's right, title and interest in, to, under and concerning the following:

155 N. Lake Ave Pasadena, CA 91101

That certain Deed of Trust dated February 17, 2005, executed by William F. Frey, II and Kristina L. Frey, Husband and Wife, as Joint Tenants, as Trustor, for the benefit of Commercial Capital Bank, FSB, a federally chartered savings bank, as Beneficiary and recorded as Instrument No. 2005000144628 on February 25, 2005 in the Official Records of the County of Orange, California.

Together with any and all notes and contracts described or referred to in said Deed of Trust, all sums, including interest, due or to become due thereunder, and all rights accrued or to accrue thereunder.

The Assignment herein is made without any representation or warranty whatsoever except as may be expressly provided in that certain mortgage Loan Purchase Agreement between Assignor and Assignee, or documents, which are attached as exhibits thereto.

Dated: March 16, 2005

Commercial Capital Bank, FSB, a federally chartered savings bank

By:
Name: Dale Schlering
Its: Vice President / Secondary Marketing Manager

State of California
County of Orange

On March 16, 2005 before me, John A. Ridenour, Notary Public personally appeared Dale Schlering,

personally known to me - OR - 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 HEREBY CERTIFY THAT THIS IS
TRUE AND CORRECT COPY OF THE

WITNESS my hand and official seal.

RECORDED 9/22/05

SIGNATURE OF NOTARY

INSTRUMENT NO. 752217
OFFICIAL RECORDS OF ORANGE
COUNTY CALIFORNIA
CHICAGO TITLE INSURANCE COMPANY.



200807812
Assignment_CCB.doc 03/11/2005

EXHIBIT "A"

PARCEL 1:

UNIT NO. 12, LOCATED ON LOT 1 OF TRACT NO. 8094, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP RECORDED IN BOOK 318, PAGES 31 AND 32 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA AND AS SHOWN ON THE DECLARATION AND CONDOMINIUM PLAN RECORDED APRIL 13, 1973 AS INSTRUMENT NO. 13388, IN BOOK 10644, PAGE 462, OFFICIAL RECORDS OF ORANGE COUNTY; (THE "CONDOMINIUM PLAN") AND AMENDMENTS THERETO RECORDED IN BOOK 11552, PAGE 516 AND IN BOOK 11552, PAGE 526, BOTH OF OFFICIAL RECORDS.

PARCEL 2:

AN UNDIVIDED 1/18TH INTEREST IN LOT 1 OF TRACT NO. 8094, AS SHOWN ON A MAP RECORDED IN BOOK 318, PAGES 31 AND 32 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, SHOWN AND DEFINED AS COMMON AREA ON THE ABOVE REFERRED TO DECLARATION AND CONDOMINIUM PLAN. RESERVING THEREFROM EXCLUSIVE EASEMENTS OVER THE "RESTRICTED COMMON AREAS" (AS THE SAME ARE SHOWN AND DEFINED IN SAID DECLARATION AND CONDOMINIUM PLAN AS AMENDED) FOR THE USES AND PURPOSES SET FORTH IN SAID DECLARATION AND CONDOMINIUM PLAN.

PARCEL 3:

EXCLUSIVE EASEMENTS APPURTENANT TO THE UNIT DESCRIBED ABOVE, FOR USE AND OCCUPANCY OF THE RESTRICTED COMMON AREAS SHOWN AND DEFINED IN THE ABOVE REFERRED TO DECLARATION AND CONDOMINIUM PLAN AS AREAS ALLOCATED FOR EXCLUSIVE USE BY THE OWNER OF THE UNIT DESCRIBED ABOVE, BEING: PATIO C 12, BALCONY B 12 AND PARKING SPACE P 12.

PARCEL 4:

NON-EXCLUSIVE EASEMENTS FOR ACCESS, INGRESS AND EGRESS, USE AND ENJOYMENT OF THE COMMON AREA SHOWN AND DEFINED IN THE ABOVE REFERRED TO DECLARATION AND CONDOMINIUM PLAN EXCEPTING THEREFROM THOSE PORTIONS OF THE COMMON AREA SHOWN AND DEFINED AS RESTRICTED COMMON AREA IN SAID CONDOMINIUM PLAN.


THIS IS CERTIFIED TO BE A
TRUE AND EXACT COPY OF
THE ORIGINAL.


Exhibit A
ESTATE LENDING DEED OF TRUST - ADJUSTABLE INTEREST RATE

C:\REGAL\ESTATE\MORTGAGE\ARJ\DOC

EXHIBIT 16

INITIAL CERTIFICATION OF TRUSTEE

June 6, 2005

IndyMac MBS, Inc.
155 North Lake Avenue
Pasadena, California 91101

IndyMac Bank, F.S.B.
155 North Lake Avenue
Pasadena, California 91101

Re: Pooling and Servicing Agreement among IndyMac MBS, Inc., as Depositor, IndyMac, Bank F.S.B., as Seller and Master Servicer, and Deutsche Bank National Trust Company, as Trustee, IndyMac INDX Mortgage Loan Trust 2005-AR12, Mortgage Pass-Through Certificates, Series 2005-AR12

Gentlemen:

In accordance with Section 2.02 of the above-captioned Pooling and Servicing Agreement (the "Pooling and Servicing Agreement"), the undersigned, as Trustee, hereby certifies that, as to each Mortgage Loan listed in the Mortgage Loan Schedule, it has received:

(i) the original Mortgage Note, endorsed as provided in the following form: "Pay to the order of _____, without recourse"; and


(ii) a duly executed assignment of the Mortgage (which may be included in a blanket assignment or assignments); provided, however, that it has received no assignment with respect to any Mortgage for which the related Mortgaged Property is located in the Commonwealth of Puerto Rico.

Based on its review and examination and only as to the foregoing documents, such documents appear regular on their face and related to such Mortgage Loan.

The Trustee has made no independent examination of any documents contained in each Mortgage File beyond the review specifically required in the Pooling and Servicing Agreement. The Trustee makes no representations as to: (i) the validity, legality, sufficiency, enforceability or genuineness of any of the documents contained in each Mortgage File of any of the Mortgage Loans identified on the Mortgage Loan Schedule, or (ii) the collectability, insurability, effectiveness or suitability of any such Mortgage Loan.

Capitalized words and phrases used herein shall have the respective meanings assigned to them in the Pooling and Servicing Agreement.

DEUTSCHE BANK NATIONAL TRUST COMPANY,
as Trustee

By: 
Name: BRENT HOYLER
Title: ASSOCIATE

FINAL CERTIFICATION OF TRUSTEE

January 5, 2006

[Depositor]

[Master Servicer]

[Seller]

Re: Pooling and Servicing Agreement among IndyMac MBS, Inc., as
Depositor, IndyMac Bank, F.S.B., as Seller and Master Servicer,
and Deutsche Bank National Trust Company, as Trustee,
Mortgage Pass-Through Certificates, Series 2005 –AR12

Gentlemen:

In accordance with Section 2.02 of the above-captioned Pooling and Servicing Agreement (the "Pooling and Servicing Agreement"), the undersigned, as Trustee, hereby certifies that as to each Mortgage Loan listed in the Mortgage Loan Schedule (other than any Mortgage Loan paid in full or listed on the attached Document Exception Report) it has received:

(i) The original Mortgage Note, endorsed in the form provided in Section 2.01(c) of the Pooling and Servicing Agreement, with all intervening endorsements showing a complete chain of endorsement from the originator to the Seller.

(ii) The original recorded Mortgage.

(iii) A duly executed assignment of the Mortgage in the form provided in Section 2.01(c) of the Pooling and Servicing Agreement; provided, however, that it has received no assignment with respect to any Mortgage for which the Mortgaged Property is located in the Commonwealth of Puerto Rico, or, if the Depositor has certified or the Trustee otherwise knows that the Mortgage has not been returned from the applicable recording office, a copy of the assignment of the Mortgage (excluding information to be provided by the recording office).

(iv) The original or duplicate original recorded assignment or assignments of the Mortgage showing a complete chain of assignment from the originator to the Seller.

(v) The original or duplicate original lender's title policy and all riders thereto or, any one of an original title binder, an original preliminary title report or an original title commitment, or a copy thereof certified by the title company.

Based on its review and examination and only as to the foregoing documents, (a) such documents appear regular on their face and related to such Mortgage Loan, and (b) the information set forth in items (i), (ii), (iii), (iv), (v) and (xv) (solely as of origination, not as of the Cut-off Date) of the definition of the "Mortgage Loan Schedule" in Section 1.01 of the Pooling and Servicing Agreement accurately reflects information set forth in the Mortgage File.


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NY1 5809122v.3

The Trustee has made no independent examination of any documents contained in each Mortgage File beyond the review specifically required in the Pooling and Servicing Agreement. The Trustee makes no representations as to: (i) the validity, legality, sufficiency, enforceability or genuineness of any of the documents contained in each Mortgage File of any of the Mortgage Loans identified on the Mortgage Loan Schedule, or (ii) the collectability, insurability, effectiveness or suitability of any such Mortgage Loan. Notwithstanding anything herein to the contrary, the Trustee has made no determination and makes no representations as to whether (i) any endorsement is sufficient to transfer all right, title and interest of the party so endorsing, as noteholder or assignee thereof, in and to that Mortgage Note or (ii) any assignment is in recordable form or sufficient to effect the assignment of and transfer to the assignee thereof, under the Mortgage to which the assignment relates.

Capitalized words and phrases used herein shall have the respective meanings assigned to them in the Pooling and Servicing Agreement.

DEUTSCHE BANK NATIONAL TRUST COMPANY,
as Trustee

By: 
Name: BRENT HOYLER
Title: ASSOCIATE

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NY1 5809122v.3

EXHIBIT "16"

OWB-KALUSH_000469
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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 18101 Von Karman Avenue, Suite 510, Irvine, CA 92612

A true and correct copy of the foregoing document entitled (*specify*): **PLAINTIFF TRUDY KALUSH'S OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, MOTION FOR PARTIAL SUMMARY ADJUDICATION; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF ROBERT P. GOE; AND REQUEST FOR JUDICIAL NOTICE IN SUPPORT THEREOF** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) October 15, 2013, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- **Allan P Bareng** barenga@bryancave.com, theresa.macaulay@bryancave.com
- **Robert P Goe** kmurphy@goeforlaw.com, rgoe@goeforlaw.com;mforsythe@goeforlaw.com
- **Robert Reganyan** reganyanlawfirm@gmail.com
- **J Alexandra Rhim** arhim@dykema.com, cperez@dykema.com
- **United States Trustee (SA)** ustpregion16.sa.ecf@usdoj.gov
- **Sharon Z. Weiss** sharon.weiss@bryancave.com, raul.morales@bryancave.com

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) October 15, 2013, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows: Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL:

(*state the method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) October 15, 2013, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows: Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

- The Honorable Erithe A. Smith, USBC, 411 West Fourth Street, Santa Ana, CA 92701 (Hand delivered)

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

October 15, 2013
Date

Susan C. Stein
Printed Name

/s/Susan C. Stein
Signature