SUPREME COURT CASE NO.
COURT OF APPEAL CASE NO. D066636

IN THE SUPREME COURT

OF CALIFORNIA

LAURA SATERBAK,

Plaintiff and Appellant,

v.

JPMORGAN CHASE BANK, N.A., et al.,

Defendants and Respondents.

After a Published Opinion by the Court of Appeal
Fourth Appellate District, Division One
Case No. D066636

PETITION FOR REVIEW

Richard L. Antognini, (CA Bar No. 075711)
LAW OFFICE OF RICHARD L. ANTOGNINI
2036 Nevada City Highway, Suite 636
Grass Valley, California 95945-7700
Telephone: (916) 295-4896
E-Mail: rlalawyer@yahoo.com
Attorneys for Plaintiff and Appellant
LAURA SATERBAK

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

Cases

GLOSSARY OF TERMS

AA: Appellant's Appendix. For example, a document found at Volume 1, page 19, of the appendix will be cited at 1 AA 19.

HBOR: California's Homeowners Bill of Rights

Saterbak: appellant Laura Saterbak

Saterbak v. JPMorgan Chase Bank:
opinion of the Court of Appeal, Fourth Appellate District, Division One, issued on March 16, 2016.

Yvanova: *Yvanova v. New Century Mortgage Corp.,* 62 Cal.4th 919 (2016)

ISSUE PRESENTED

Does the decision of this Court in *Yvanova v. New Century Mortgage Corp.,* 62 Cal.4th 919 (2016), allow a homeowner to bring a suit to challenge a void assignment of her loan before a foreclosure sale has taken place?

WHY REVIEW SHOULD BE GRANTED

In *Yvanova,* 62 Cal.4th at 924, this Court held a homeowner had "standing" to challenge a void assignment of her home loan through an action for wrongful foreclosure: "We hold only that a borrower who has suffered a nonjudicial foreclosure does not lack standing to sue for wrongful foreclosure based on an allegedly void assignment merely because he or she was in default on the loan and was not a pretty to the assignment." The Court did not decide whether this rule applied to actions where the borrower's home had yet to be sold through a foreclosure sale. *Ibid.*

Here, the court of appeal held that the *Yvanova* rule did not apply to cases where a foreclosure sale had yet to occur. Saterbak v. JPMorgan Chase, slip opinion at page 8. This conclusion cannot stand after *Yvanova.*

First, one of the prime reasons for this Court to grant review is to establish "uniformity of decision". Rule 8.500 (b) (1)

of the California Rules of Court. Should the Saterbak opinion stand without review, two systems of laws to govern foreclosure cases will be established. In cases where a foreclosure sale has not taken place, lower courts could find that borrowers do not have "standing" to attack void assignments. Cases like *Jenkins v. JPMorgan Chase Bank, N.A.,* 216 Cal.App.4th 497 (2013), will still prevail, even though this Court disapproved *Jenkins* and its followers, 62 Cal.4th 939, fn. 13. In post foreclosure actions, lower courts will follow the rules this Court set in *Yvanova,* 62 Cal.4th at 923-924, and will allow borrowers to challenge void assignments.

Second, as this Court held in *Yvanova,* 62 Cal.4th at 929, a void assignment is void from the beginning. It does not change from voidable to void merely because a foreclosure sale occurs. The Saterbak opinion, if it stands, will create confusion because, in effect, it permits a void assignment to authorize a foreclosure when this Court held that a void contract had no legal effect at all. *Yvanova,* 62 Cal.4th at 929.

Third, no public policy supports a distinction between pre-foreclosure cases and post-foreclosure cases when allowing a borrower to sue over a void assignment. Allowing that distinction

undercuts the public policies this Court relied on in *Yvanova*, 62 Cal.4th at 926. It also deprives borrowers of the only effective remedy they may have against a threatened foreclosure. Further, it undermines the public policy set by the Homeowners Bill of Rights, which clearly allows a pre-foreclosure attack against a void assignment. Finally, the foreclosure statues now make clear that they do not limit a borrower's remedies. See Civil Code section 2924.12 (h).

STATEMENT OF THE CASE

A. The First Amended Complaint and the demurrer.

This case arises from a demurrer to appellant Laura Saterbak's (or "Saterbak") First Amended Complaint (or "FAC"). The FAC contained these allegations: Saterbak owns a home in La Mesa, California. 1 AA 10, ¶¶s 9-10. On May 24, 2007, she took out a home loan from American Brokers Conduit. 1 AA 117. At the same time, she signed a deed of trust 1 AA 117-130. The deed of trust governed her relationship with her "Lender." *Ibid.* Among other things, it gave the "Lender" the power to sell her home at a foreclosure sale if she defaulted on the loan. 1 AA 119.

Saterbak sued to challenge an invalid assignment to a securitized trust. 1 AA 9, ¶ 5; 1 AA 18. The name of the securitized trust was

"Structured Asset Mortgage Investments II Trust 2007-AR7 Mortgage Pass-Through Certificates 2007-AR7. 1 AA 4, ¶5. (Saterbak shall refer to this entity as the "Securitized Trust.") This Securitized Trust was the sole defendant Saterbak named in her complaint. 1 AA Vol. 9, ¶ 5.

The December 27, 2011 "Corporate Assignment of Deed of Trust" (or "December 2011 assignment") stated, in part:

> FOR GOOD AND VALUABLE CONSIDERATION . . . the undersigned MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. . . . AS NOMINEE FOR AMERICAN BROKERS CONDUIT . . . does convey, grant, sell, assign, transfer and set over the described Deed of Trust . . . to CTIBANK, NA., AS TRUSTEE FOR THE STRUCTURED ASSET MORTGAGE INVESTMENTS II TRUST 2007-AR7 MORTGAGE PASS-THROUGH CERTIFICATES 2007-AR7. . . .1 AA 18.

The Securitized Trust in Saterbak's case was a REMIC trust. It had a closing date of September 18, 2007. That date meant that all loans in the trust had to be transferred to the Trust by September 18, 2007 or within 90 days of that date. 1 AA 10-11, at ¶¶ 11-12.

The FAC contained two causes of action—cancellation of instruments and declaratory relief. 1 AA 176, 182-184. It had a single goal: invalidating the December 2011 transfer of Saterbak's deed of trust into the securitized trust. 1 AA 185. It named a single defendant—the securitized trust. 1 AA 179, at ¶ 7. It charged:

> The specific Terms and Provisions governing said Trust are established, dictated and enumerated within the Trust's "Pooling & Service Agreement" (which regulates the course and conduct of the business of the Trust). Thirdly: the "IRS by and through its Tax Code" also regulates this Trust, which . . . permits this Trust to remain as a "REMIC" Trust and therefore enjoy the luxury of Tax free exempt status. Collectively: 1) the Laws of the State of New York; 2) the "Pooling & Service Agreement" of the Trust itself; and 3) the "IRS Tax Code" all require, mandate and obligate that each and every Title Instrument such as the "Assignment of Deed of Trust" . . . must be assigned, transferred and or deposited into this Trust on or before its Closing date, which clearly as evidenced herein was not. 1 AA 181-182, at ¶ 14; formatting in original omitted.

The FAC contended that the "subject 'Assignment of Deed of Trust' . . . and of which the assignment was effectuated years after the 'Securitized Trust' . . . was closed, as a Legal, Proximate, Direct and indirect cause, would render this 'Assignment of Deed of Trust' . . . legally Void." 1 AA 182, at ¶ 16; formatting in original omitted.

The Securitized Trust demurred to the FAC and, on August 1, 2014, the trial court sustained the demurrer without leave to amend. 2 AA 340-341. The trial court noted: "the FAC does, in fact, allege that the assignment is void because the loan was not moved into the securitized trust in a timely manner." 2 AA 340. The court concluded that the "majority of decisions addressing this issue hold that borrowers have no standing to sue based on alleged

noncompliance with a pooling and servicing agreement if they are not parties to the agreement." *Ibid.*

The trial court then said that Saterbak could not attack the assignment because "Plaintiff has not 'relied' on the assignment, and has not sustained any injury as a result of the assignment." 2 AA 341. Saterbak appealed.

B. The Court of Appeal decisions

The court of appeal issued two opinions in this case. The first opinion, handed down February 16, 2016, affirmed the trial court ruling that sustained the demurrer. It found that Saterbak lacked standing and could not allege prejudice. It relied on decisions like *Jenkins v. JPMorgan Chase Bank,* 216 Cal.App.4th 497 (2013), and *Fontenot v. Wells Fargo Bank, N.A.*, 198 Cal.App.4th 256 (2011).

After this Court decided *Yvanova,* Saterbak filed a petition for rehearing. She stressed that the court of appeal's February 16, 2016 opinion was wrong after *Yvanova* and rehearing should be granted to bring the opinion in line with *Yvanova.*

On March 16, 2016, the court of appeal granted Saterbak's petition for rehearing. At the same time, it issued a new opinion. (A copy of the opinion is attached as Exhibit 1 to this petition for review.) Again, it affirmed the trial court's ruling that sustained the demurrer without leave to amend.

How did the court of appeal deal with *Yvanova*? It concluded that *Yvanova* did not apply to a case where a home had not gone through a foreclosure sale. It called Saterbak's case a "preforeclosure suit." Saterbak opinion, at page 8. The court of appeal believed that *Yvanova* applied only to "post-foreclosure" actions:

> However, *Yvanova's* ruling is expressly limited to the post-foreclosure context. (Citing *Yvanova*, 62 Cal.4th at pp. 934-935 ("narrow question" under review was whether a borrower seeking remedies for *wrongful foreclosure* has standing, not whether a borrower could *preempt* a nonjudicial foreclosure)].) Because Saterbak brings a preforeclosure suit challenging Defendant's ability to foreclose, *Yvanova* does not alter her standing obligations. Saterbak opinion, at page 8; italics in original.

Having avoided *Yvanova,* the court of appeal then relied on *Jenkins* and other cases to hold that Saterbak had no "standing" to challenge the December 2011 assignment. Saterbak opinion, at pages 8-9. And, it concluded that, at best, she had alleged only a "voidable" assignment under New York law, which it found governed the securitized trust. Saterbak opinion, at page 9. The court of appeal also rejected other arguments Saterbak made, but those arguments are peripheral to the issues submitted to this Court for review.

Saterbak filed a second petition for rehearing on April 1, 2016. The court of appeal denied rehearing on April 11, 2016. (The court of appeal's order denying rehearing is attached as Exhibit 2 to this Petition.)

C. This petition for review is timely.

The court of appeal opinion became final on April 15, 2016 under California Rule of Court 8.264 (b) (3). This petition for review is due 10 days later or by April 25, 2016 under Rule 8.500 (c) (1). The petition is timely because it has been given to Federal Express on April 25, 2016 for overnight delivery. Rule 8.25 (b) (3).

ARGUMENT

A. This Court should grant review to establish a uniform set of rules to govern both preforeclosure and postforeclosure cases.

The Saterbak opinion threatens to create inconsistency in foreclosure law and two parallel systems, each with conflicting rules. In postforeclosure cases (cases where a foreclosure sale has taken place), the rules are clear. Under *Yvanova,* borrowers have standing to allege that assignments of their loans are void and therefore cannot be enforced. *Yvanova,* 62 Cal.4th at 923-924.

In addition, in postforeclosure actions, plaintiffs do not need to allege "prejudice" to state a cause of action. They need only charge that they lost their home to a party who had no power to foreclose because it relied on a void assignment. "A homeowner who has been foreclosed on with no right to do so has suffered an injuries invasion of his or her legal rights at the foreclosing entity's hands. Nothing more is required for standing to sue." *Yvanova,* 62 Cal.4th at 939. Finally, in postforeclosure cases, defendants cannot rely on *Jenkins, Fontenot, Siliga v. Mortgage Electronic Systems, Inc.,* 219 Cal.App.4th 75 (2013), to argue that borrowers lack standing. *Yvanova,* 62 Cal.4th at 939, fn. 13.

In the system the Saterbak opinion makes possible, all these rules are rejected. In preforeclosure cases, borrowers do not have standing to allege that a threatened foreclosure is wrong because it rests on a void assignment. Saterbak opinion, at pages 8-9. Further, a borrower must allege some sort of "prejudice." It is not enough that she charges she may lose her home to a party that has no power to foreclose because it is acting on a void assignment. *Ibid.* Finally, cases like *Jenkins, Fontenot,* and *Siliga* have been given new life, even though this Court rejected them in *Yvanova.* In preforeclosure cases, courts still can rely on

those cases to find that borrowers have no standing. They can use those cases to uphold demurrers to borrowers' actions. *Ibid.*

This difference between preforeclosure and postforeclosure cases makes no sense. It is like saying to a homeowner that, when an arsonist sets fire to her home, she cannot call the fire department or even use a hose to put out the fire. Instead, she must wait until the fire burns her house to the ground. Only then can she sue the arsonist for damages. She can do nothing to prevent the fire in the first place.

Under Rule 8.500, this Court can grant review to establish consistent legal rules. It should do so here to make clear that the same rules apply to preforeclosure cases as apply to postforeclosure cases. Both borrowers and lenders are entitled to a single set of uniform rules, rather than the conflicting standards the Saterbak opinion seems to establish. Review should be granted to apply the *Yvanova* holdings to preforeclosure cases.

This Court already recognizes the importance of a set of uniform rules for foreclosure cases. It has accepted review in *Keshtgar v. U.S. Bank, N.A.,* case no. S220012, *review granted* October 1, 2014. *Keshtgar* is a preforeclosure case that raises the

same issues as Saterbak. The Court should order further briefing in *Keshtgar* and issue a grant and hold order in Saterbak, or it should order full briefing in Saterbak.

B. Review should be granted to resolve the conflict between *Gomes v. Countrywide* and Saterbak.

Typically, when this Court grants review to resolve a conflict in published cases, it reviews a conflict between two different district courts of appeal. That is why it granted review in *Yvanova*. See 62 Cal.4th at 926. In Saterbak's case, the conflict comes from the same court. Division One of the Fourth District Court of Appeal has come to two different conclusions on whether a borrower can ever bring a preforeclosure action to challenge a void assignment. In one case, *Gomes v. Countrywide Home Loans, Inc.*, 192 Cal.App.4th 1149, 1156 (2011), the court of appeal ruled that a plaintiff can use a pre-foreclosure suit to stop a foreclosure sale if his complaint "identified a *specific factual basis* for alleging the foreclosure was not initiated by the correct party." (Italics added.)

Yet, the same court now has held in the Saterbak opinion, at page 8, fn. 3, that a borrower can never bring a preforeclosure action:

> Saterbak is mistaken in claiming *Gomes* holds 'a borrower can challenge the power of an alleged loan purchaser to foreclose if [the borrower] can allege specific facts showing the assignment is invalid.' As discussed, *Gomes* holds that under California law, plaintiffs may not bring preemptive actions to challenge a defendant's power to foreclose.

Saterbak did not purport to overrule *Gomes*. So, courts considering which side to choose in the preforeclosure vs. postforeclosure debate still can rely on *Gomes* and allow a borrower to file a preforeclosure suit. Or, they can rely on Saterbak to hold such suits are always barred, no matter what specific facts they allege. Again, borrowers and lenders need uniform rules they can follow. *Gomes* and Saterbak do not create uniform rules; they create only conflict. Review should be granted to resolve this conflict and establish a uniform rule. That rule should allow preforeclosure actions that allege specific facts showing a break in title to a loan.

C. Review is necessary because the court of appeal opinion is inconsistent with Yvanova's ruling that a void assignment can never have any legal effect.

As noted, the court of appeal's opinion rests on the idea that *Yvanova* has nothing to do with pre-foreclosure suits. "However, *Yvanova's* ruling is expressly limited to the post-foreclosure context . . . Because Saterbak brings a pre-foreclosure suit challenging Defendant's ability to foreclose, *Yvanova* does not alter her standing obligations." Saterbak, slip opinion at page 8 (citations omitted).

The language of *Yvanova* cannot be brushed aside so easily. In *Yvanova,* this Court discussed void vs. voidable assignments. It made clear that a void assignment has no legal effect from the beginning: "A void contract is without legal effect. 'Such a contract has no existence whatever. It has no legal entity for any purpose and neither action nor inaction of a party can validate it. . . .' 'A void thing is as no thing.'" *Yvanova,* 62 Cal.4th at 929, *quoting Colby v. Title Ins. and Trust Co.,* 160 Cal. 632, 644 (1911), *and First National Bank of L.A. v. Maxwell,* 123 Cal. 360, 371 (1899).

The problem with the Saterbak opinion is that it means a "void" contract has an existence. It has a legal impact. According to Saterbak, before a foreclosure sale occurs, a "void" assignment can allow a purported "beneficiary" under a deed of trust to order the issuance of a notice of default and a notice of sale. It can even order the sale and complete the sale. A "void" assignment permits a party to begin the foreclosure process and all that entails in stress and damage to a borrower. Yet, under the Saterbak opinion's reasoning, the borrower has no power to challenge those actions. Only after she loses her home to a foreclosure sale does the assignment truly become "void." Only then can she sue for damages. But, it likely is too late for her to recover her home.

This result cannot stand in the face of *Yvanova*. This Court has held that a "void" assignment can never have any legal effect. *Yvanova,* 62 Cal.4th at 929, 931-932. A void assignment does not change merely because a borrower is bringing a pre-foreclosure lawsuit. It does not matter when that assignment occurs; it has no effect ever. Because a void assignment is void from the outset, it can never authorize any step in the foreclosure process, from the notice of default to the completion of a foreclosure sale. This

is the clear conclusion of *Yvanova*. The Saterbak opinion cannot be reconciled with the language of the Supreme Court in *Yvanova*. For that reason, review should be granted.

D. Contrary to what the court of appeal believed, this Court did not decide that its *Yvanova* holdings could never apply to a preforeclosure lawsuit.

The court of appeal justified its ruling against Saterbak by writing that this Court held in *Yvanova* its rulings did not apply to pre-foreclosure lawsuits. Saterbak opinion, at page 8. *Yvanova* does not make a decision one way or another on the issue: "We do not address the distinct question of whether, or under what circumstances, a borrower may bring an action for injunctive or declaratory relief to prevent a foreclosure sale from going forward." *Yvanova,* 62 Cal.4th at 934.

When this Court granted review in *Yvanova,* it limited the question presented to whether a borrower had standing to bring a wrongful foreclosure action based on her allegation that the assignment of her loan was void. *Yvanova,* 62 Cal.4th at 923. The parties limited their arguments to that question. They did not deal with pre-foreclosure cases. There is no basis in the *Yvanova* opinion for an argument that it forbids a pre-foreclosure lawsuit.

E. California public policy, as expressed in the foreclosure statutes, allows a pre-foreclosure lawsuit.

California public policy favors a pre-foreclosure lawsuit to challenge void assignments. As this Court noted in *Yvanova*, the purpose behind the foreclosure statutes is not just to allow a quick non-judicial remedy for the lender. Those statutes also are designed to prevent a homeowner from losing her home unjustly. *Yvanova,* 62 Cal.4th at 926.

The Homeowners Bill of Rights (or "HBOR") confirms that policy through Civil Code sections 2924 (a) (6), 2923.55, 2924.12, and 2924.17 (b). The HBOR states the public policy now in force behind the foreclosure statutes. *Yvanova,* 62 Cal.4th at 941, fn. 14. Because this Court will decide whether the public policy behind the foreclosure statutes allows a preemptive lawsuit, it must rely on the present public policy as found in the HBOR.

And, the respondents in Saterbak's case started to foreclosure process knowing that the HBOR was about to go into effect. Although the HBOR became effective on January 1, 2013, it was passed months before. All the major participants in the mortgage industry knew about it, including respondents. Acting with that knowledge, they had the December 2011 assignment recorded on December 17, 2012. 1 AA 18. They began the foreclosure process on

December 17, 2012 by issuing a Notice of Default. 2 AA 310. That act occurred just 15 days before the HBOR became effective. Finally, they issued a Notice of Trustee's Sale on March 19, 2013, after the HBOR went into force. 1 AA 145. They cannot plausibly claim that the HBOR is irrelevant to their actions.

The HBOR gives a borrower the ability to block a foreclosure sale if the statutes have been violated. A homeowner can sue, for example, if a party claiming a right to foreclose does not own the borrower's loan. *See, e.g.,* Civil Code sections 2924 (a) (6), and 2924.17 (b); *Yvanova,* 62 Cal.4th at 941, fn. 14. Under Civil Code section 2924.12 (a), a borrower has the right to file an action for an injunction to prevent a foreclosure sale: "(a) (1) If a trustee's deed upon sale has not been recorded, a borrower may bring an action for injunctive relief to enjoin a material violation of Section 2923.55, 2923.6, 2923.7, 2924.9, 2924.10, 2924.11, or 2924.17."

If a foreclosing entity lacks the power to foreclose because it holds a void assignment, a homeowner is unjustly harmed by losing her home in a foreclosure sale. *Yvanova,* 62 Cal.4th at 931-932. By guarding against that result, a pre-foreclosure suit supports a chief policy behind the foreclosure statutes. The policy behind the foreclosure statutes, as reaffirmed by the HBOR, supports Saterbak's right to bring a pre-foreclosure lawsuit.

Equally important, the HBOR contains a provision that disclaims any idea the foreclosure statutes provide any kind of exclusive remedy or somehow occupy the foreclosure field. Civil Code Section 2924.12 (h) warns that the "rights, remedies, and procedures provided by this section are in addition to and independent of any other rights, remedies, or procedures under any other law. Nothing in this section shall be construed to alter, limit, or negate any other rights, remedies, or procedures provided by law." The clear language of this anti-preemption statute must be liberally construed to protect borrowers. *Cf. Monterossa v. Superior Court,* 237 4th 747, 755 (2015). So construed, it destroys any idea that the foreclosure statutes provide exclusive remedies or somehow preclude a pre-foreclosure lawsuit to challenge a void assignment.

If the Saterbak opinion stands, it will weaken the public policy expressed in the HBOR. As this Court noted in *Yvanova*, 62 Cal.4th at 941, fn. 1, the HBOR "was prompted in part by reports that nonjudicial foreclosure proceedings were being initiated on behalf of companies with no authority to foreclose."

If courts find the Saterbak opinion persuasive, they will be tempted to import into HBOR claims the "standing" rules found in disapproved cases like *Jenkins*. That already has happened in at least one unpublished court of appeal case. See Manos v U.S. Bank,

N.A., 2015 Cal.App.Unpub.LEXIS 8098, at **s 12-13 (Cal. Ct. App. 2nd Dist, Nov. 9, 2015). This Court should grant review to emphasize that the "standing" rules created by *Jenkins* and like cases have no part in construing the rights given to borrowers by the HBOR.

CONCLUSION

For these reasons, plaintiff and appellant LAURA SATERBK respectfully requests that the Court grant review in this case and reverse the decision of the court of appeal. In the alternative, she asks that the Court grant review and defer briefing until it decides the *Keshtgar* case or another case now before the Court that raises the same issues as this Petition.

Dated: April 25, 2016

LAW OFFICE OF
RICHARD L. ANTOGNINI

By:

By: Richard L. Antognini
Attorneys for Plaintiff and
Appellant LAURA SATERBAK

CERTIFICATE OF WORD COUNT
Calif. Rules of Court, Rule 8.504 (d) (1)

The text in this Petition for Review consists of 4,096 words, as counted by the Word 2007 word processing program used to generate the Petition.

Dated: April 25, 2016

LAW OFFICE OF
RICHARD L. ANTOGNINI

By:

By: Richard L. Antognini
Attorneys for Plaintiff and
Appellant LAURA SATERBAK

Court of Appeal Case No. D066636
Saterbak v. JPMorgan Chase Bank, N.A.

PROOF OF SERVICE BY FIRST CLASS MAIL AND BY EMAIL

I, Richard L. Antognini, declare:

On April 25, 2016, I served the following documents on respondents' counsel: APPELLANT'S PETITION FOR REVIEW. I placed a true copy of this document in a sealed envelope addressed as follows:

Richard P. Steelman, Jr., Esq.
BRYAN CAVE LLP
120 Broadway, Suite 300
Santa Monica, CA 90401
(Counsel for Respondents)

I also sent a copy of APPELLANT'S PETITION FOR REVIEW to respondents' counsel by email by sending it to the following email address: Ricky.Steelman@bryancave.com. The email was not returned by the server for respondents' counsel.

I served the petition for review on the trial court by mail and on the California Supreme Court by efiling the petition with the Supreme Court. The addresses of the trial court and the California Supreme Court are:

Clerk
California Supreme Court
350 McAllister Street
San Francisco, California 94102
(efiled copy of petition)

Hon. Joel R. Wohlfeil
Judge of the Superior Court
County of San Diego
220 West Broadway
San Diego, California 92101

I deposited such envelopes in the mail at Grass Valley, California. The envelope was mailed with postage fully prepaid. I am familiar with the firm's practice of collecting and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on the same day with postage fully prepaid at Grass Valley, California in the ordinary course of business. I am aware that on the motion of the party served, serivce is presumed invalid if the postage cancelled date or postage meter date is more than one day after the date of deposit stated in the mailing affidavit.

I declare under penalty of perjury of the laws of the State of California and the United States that the foregoing is true and correct. Executed on April 25, 2016 at Grass Valley, California.

_____

Richard L. Antognini

EXHIBIT ONE TO PETITION

FOR REVIEW

COURT OF APPEAL OPINION

Filed 3/16/16

CERTIFIED FOR PUBLICATION

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

LAURA SATERBAK, Plaintiff and Appellant, v. JP MORGAN CHASE BANK, N.A. as attorney-in-fact for CITIBANK, N.A. as Trustee for STRUCTURED ASSET MORTGAGE INVESTMENT II TRUST 2007-AR7 MORTGAGE PASS-THROUGH CERTIFICATES 2007-AR7, Defendant and Respondent.	D066636 (Super. Ct. No. 37-2014-00084605-CU-OR-CTL)

APPEAL from a judgment of the Superior Court of San Diego County, Joel R. Wohlfeil, Judge. Affirmed.

Law Offices of Richard L. Antognini and Richard L. Antognini, for Plaintiff and Appellant.

Bryan Cave, Glenn J. Plattner and Richard P. Steelman, Jr., for Defendant and Respondent.

Laura Saterbak appeals a judgment dismissing her first amended complaint (FAC) after the sustaining of a demurrer without leave to amend. Saterbak claims the assignment of the deed of trust (DOT) to her home by Mortgage Electronic Registration Systems, Inc. (MERS) to Structured Asset Mortgage Investment II Trust 2007-AR7 Mortgage Pass-Through Certificates 2007-AR7 (2007-AR7 trust or Defendant) was invalid. Arguing the assignment occurred after the closing date for the 2007-AR7 trust, and that the signature on the instrument was forged or robo-signed, she seeks to cancel the assignment and obtain declaratory relief. We conclude Saterbak lacks standing and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

In April 2007, Saterbak purchased real property on Mount Helix Drive, La Mesa, California through a grant deed. She executed a promissory note (Note) in May 2007, in the amount of $1 million, secured by the DOT. The DOT named MERS as the beneficiary, "solely as nominee for Lender and Lender's successors and assigns." It acknowledged MERS had the right "to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property."

On December 27, 2011, MERS executed an assignment of the DOT to "Citibank, N.A. as Trustee for [2007-AR7 trust]." The assignment was recorded nearly a year later, on December 17, 2012. It is this assignment that Saterbak challenges. The 2007-AR7 trust is a real estate mortgage investment conduit (REMIC) trust; its terms are set forth in a pooling and servicing agreement (PSA) for the trust, which is governed under New

York law. Pursuant to the PSA, all loans had to be transferred to the 2007-AR7 trust on or before its September 18, 2007, closing date.

Saterbak fell behind on her payments. On December 17, 2012, Citibank N.A. substituted and appointed National Default Servicing Corporation (NDS) as trustee under the DOT. The substitution of trustee form was executed by JPMorgan Chase Bank, N.A. (hereafter Chase) as attorney-in-fact for Citibank N.A., trustee for the 2007-AR7 trust. NDS recorded a notice of default on December 17, 2012. By that point, Saterbak had fallen $346,113.99 behind in payments. On March 19, 2013, NDS recorded a notice of trustee's sale, scheduling a foreclosure sale for April 10, 2013. By that point, Saterbak owed an estimated $1,600,219.13.[1]

Saterbak filed suit in January 2014. She alleged the DOT was transferred to the 2007-AR7 trust four years after the closing date for the security, rendering the assignment invalid. She further alleged the signature on the assignment document was robo-signed or a forgery. She sought to cancel the assignment as a "cloud" on her title pursuant to Civil Code[2] section 3412. She also sought declaratory relief that the same defects rendered the assignment void.

In May 2014, the trial court sustained Chase's demurrer. It held Saterbak lacked standing to sue based on alleged noncompliance with the PSA for 2007-AR7 trust

---

1 The parties do not dispute Saterbak is in arrears on her debt obligations and a foreclosure sale has yet to take place.

2 All further statutory references are to the Civil Code unless otherwise specified.

because she did not allege she was a party to that agreement. The court granted Saterbak leave to amend to plead a different theory for cancellation of the DOT.

Saterbak filed the FAC in May 2014. The FAC asserted the same causes of action for cancellation of the assignment and declaratory relief premised on the same theories of untimely securitization of the DOT and robo-signing. The FAC claimed it did not "seek to challenge . . . any Foreclosure Proceedings and or Trustee's Sale."

Chase demurred and requested judicial notice of the following instruments: the DOT, the corporate assignment DOT, substitution of trustee, notice of default, and notice of trustee sale. The trial court granted Chase's request for judicial notice and sustained its demurrer. The court held, "Despite the arguments made by Plaintiff, the FAC does, in fact, allege that the assignment is void because the loan was not moved into the securitized trust in a timely manner." As it had previously, the court held Saterbak lacked standing to sue based on alleged noncompliance with the PSA, as she was not a party to that agreement. The court also rejected Saterbak's robo-signing theory for lack of standing, stating she had not alleged that she "relied" on the assignment or sustained injury from it. The court denied leave to amend, noting the FAC was Saterbak's second attempt and concluding there was no possibility she could remedy her standing deficiencies through amendment.

The court entered judgment for Chase in August 2014, and Saterbak timely appealed.

DISCUSSION

"On appeal from a judgment of dismissal entered after a demurrer has been sustained, this court reviews the complaint de novo to determine whether it states a cause of action. [Citation.] We assume the truth of all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law." (*Folgelstrom v. Lamps Plus, Inc.* (2011) 195 Cal.App.4th 986, 989-990.) We may consider matters that are properly judicially noticed. (*Four Star Electric, Inc. v. F & H Construction* (1992) 7 Cal.App.4th 1375, 1379.)

"If the trial court has sustained the demurrer, we determine whether the complaint states facts sufficient to state a cause of action. If the court sustained the demurrer without leave to amend, as here, we must decide whether there is a reasonable possibility the plaintiff could cure the defect with an amendment. [Citation.] If we find that an amendment could cure the defect, we conclude that the trial court abused its discretion and we reverse; if not, no abuse of discretion has occurred. [Citation.] The plaintiff has the burden of proving that an amendment would cure the defect." (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081.)

Central to this appeal is whether as a borrower, Saterbak has standing to challenge the assignment of the DOT on grounds that it does not comply with the PSA for the securitized instrument. For the reasons discussed below, the trial court properly sustained Defendant's demurrer to the FAC without leave to amend.

I. STANDING

A. *Saterbak Bears the Burden to Demonstrate Standing*

"Standing is a threshold issue, because without it no justiciable controversy exists." (*Iglesia Evangelica Latina, Inc. v. Southern Pacific Latin American Dist. of the Assemblies of God* (2009) 173 Cal.App.4th 420, 445.) "Standing goes to the existence of a cause of action." (*Apartment Assn. of Los Angeles County, Inc. v. City of Los Angeles* (2006) 136 Cal.App.4th 119, 128.) Pursuant to Code of Civil Procedure section 367, "[e]very action must be prosecuted in the name of the real party in interest, except as otherwise provided by statute."

Saterbak contends the 2007-AR7 trust bears the burden of proving the assignment in question was valid. This is incorrect. As the party seeking to cancel the assignment through this action, Saterbak "must be able to demonstrate that . . . she has some such beneficial interest that is concrete and actual, and not conjectural or hypothetical." (*Holmes v. California Nat. Guard* (2001) 90 Cal.App.4th 297, 315.)

Saterbak's authorities do not suggest otherwise. She cites *Fontenot*, but that case actually held "MERS did not bear the burden of proving a valid assignment"—instead, "the burden rested with plaintiff affirmatively to plead facts demonstrating the impropriety." (*Fontenot v. Wells Fargo Bank, N.A.* (2011) 198 Cal.App.4th 256, 270 (*Fontenot*), disapproved on other grounds in *Yvanova v. New Century Mortgage Corp.* 62 Cal.4th 919, 939, fn. 13 (*Yvanova*).) Saterbak also cites *Cockerell* and *Neptune*, but those cases merely held that an assignee *who files suit to enforce an assigned right* bears the burden of proving a valid assignment. (*Cockerell v. Title Ins. & Trust Co*. (1954) 42

Cal.2d 284, 292; *Neptune Society Corp. v. Longanecker* (1987) 194 Cal.App.3d 1233, 1242.)

B. *Saterbak Lacks Standing to Challenge the Assignment*

Saterbak alleges the DOT was assigned to the 2007-AR7 trust in an untimely manner under the PSA. Specifically, she contends the assignment was void under the PSA because MERS did not assign the DOT to the 2007-AR7 trust until years after the closing date. Saterbak also alleges the signature of "Nicole M. Wicks" on the assignment document was forged or robo-signed.

Saterbak lacks standing to pursue these theories. The crux of Saterbak's argument is that she may bring a preemptive action to determine whether the 2007-AR7 trust may initiate a nonjudicial foreclosure. She argues, "If the alleged 'Lender' is not the true 'Lender,' " it "has no right to order a foreclosure sale." However, California courts do not allow such preemptive suits because they "would result in the impermissible interjection of the courts into a nonjudicial scheme enacted by the California Legislature." (*Jenkins v. JPMorgan Chase Bank, N.A.* (2013) 216 Cal.App.4th 497, 513 (*Jenkins*), disapproved on other grounds in *Yvanova*, *supra*, 62 Cal.4th at p. 939, fn. 13; see *Gomes v. Countrywide Home Loans, Inc.* (2011) 192 Cal.App.4th 1149, 1156 (*Gomes*) ["California's nonjudicial foreclosure law does not provide for the filing of a lawsuit to determine whether MERS has been authorized by the holder of the Note to initiate a foreclosure"].) As the court reasoned in *Gomes*:

> "[The borrower] is not seeking a remedy for misconduct. He is seeking to impose the additional requirement that MERS demonstrate in court that it is authorized to initiate a

> foreclosure. . . . [S]uch a requirement would be inconsistent with the policy behind nonjudicial foreclosure of providing a quick, inexpensive and efficient remedy." (*Gomes, supra,* at p. 1154, fn. 5.)[3]

The California Supreme Court recently held that a borrower has standing to sue for wrongful foreclosure where an alleged defect in the assignment renders the assignment void. (*Yvanova*, *supra*, 62 Cal.4th at pp. 942-943.) However, *Yvanova's* ruling is expressly limited to the post-foreclosure context. (*Id.* at pp. 934-935 ("narrow question" under review was whether a borrower seeking remedies for *wrongful foreclosure* has standing, not whether a borrower could *preempt* a nonjudicial foreclosure)].) Because Saterbak brings a preforeclosure suit challenging Defendant's ability to foreclose, *Yvanova* does not alter her standing obligations.[4]

Moreover, *Yvanova* recognizes borrower standing only where the defect in the assignment renders the assignment *void*, rather than *voidable*. (*Yvanova, supra*, 62 Cal.4th at pp. 942-943.) "Unlike a voidable transaction, a void one cannot be ratified or validated by the parties to it even if they so desire." (*Id.* at p. 936.) *Yvanova* expressly offers no opinion as to whether, under New York law, an untimely assignment to a

---

3 Saterbak is mistaken in claiming *Gomes* holds "a borrower can challenge the power of an alleged loan purchaser to foreclose if [the borrower] can allege specific facts showing the assignment is invalid." As discussed, *Gomes* holds that under California law, plaintiffs may not bring preemptive actions to challenge a defendant's power to foreclose. (*Gomes, supra*, 192 Cal.App.4th at p. 1156.)

4 The Supreme Court has granted review in *Keshtgar v. U.S. Bank, N.A.,* review granted October 1, 2014, S220012, a case involving a preforeclosure challenge based on alleged deficiencies in the assignment of the deed of trust.

securitized trust made after the trust's closing date is void or merely voidable. (*Id.* at pp. 940-941.) We conclude such an assignment is merely voidable. (See *Rajamin v. Deutsche Bank Nat'l Trust Co.* (2d Cir. 2014) 757 F.3d 79, 88-89 ["the weight of New York authority is contrary to plaintiffs' contention that any failure to comply with the terms of the PSAs rendered defendants' acquisition of plaintiffs' loans and mortgages void as a matter of trust law"; "an unauthorized act by the trustee is not void but merely voidable by the beneficiary"].)[5] Consequently, Saterbak lacks standing to challenge alleged defects in the MERS assignment of the DOT to the 2007-AR7 trust.

C. *The DOT Does Not Confer Standing*

Saterbak argues "clear language" in the DOT and "the rules of adhesion contracts" confer standing. We disagree. In signing the DOT, Saterbak agreed the Note and DOT could be sold "one or more times without prior notice." She further agreed:

> "Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument."[6]

---

5 Saterbak cites *Glaski v. Bank of America* (2013) 218 Cal.App.4th 1079, but the New York case upon which *Glaski* relied has been overturned. (*Wells Fargo Bank, N.A. v. Erobobo* (N.Y. App. Div. 2015) 127 A.D.3d 1176, 1178; see *Rajamin, supra,* 757 F.3d at p. 90 [rejecting *Glaski's* interpretation of New York law].) We decline to follow *Glaski* and conclude the alleged defects here merely render the assignment voidable.

6 As the court explained in *Fontenot*: "MERS is a private corporation that administers a national registry of real estate debt interest transactions. Members of the MERS System assign limited interests in the real property to MERS, which is listed as a

"The authority to exercise all of the rights and interests of the lender necessarily includes the authority to assign the deed of trust." (*Siliga v. Mortgage Electronic Registration Systems, Inc.* (2013) 219 Cal.App.4th 75, 84, disapproved on other grounds in *Yvanova*, *supra*, 62 Cal.4th at p. 939, fn. 13; see *Herrera v. Federal National Mortgage Assn.* (2012) 205 Cal.App.4th 1495, 1504 [interpreting language identical to Saterbak's DOT to give MERS "the right to assign the DOT"], disapproved on other grounds in *Yvanova*, at p. 939, fn. 13.) The federal court adjudicating Saterbak's parallel case against her loan servicer cited the above-quoted language in the DOT to reject the same securitization theory proffered here. (*Saterbak v. National Default Servicing Corp.* (S.D.Cal. Oct. 1, 2015, Civ. No. 15-CV-956-WQH-NLS) 2015 WL 5794560, at *7.)

Saterbak nevertheless points to language in the DOT that only the "Lender" has the power to declare default and foreclose, while the "Borrower" has the right to sue prior to foreclosure in order to " 'assert the non-existence of a default or any other defense of Borrower to acceleration and sale.' " But these provisions do not change her standing obligations under California law; they merely give Saterbak the power to argue any defense *the borrower* may have to avoid foreclosure. As explained *ante*, Saterbak lacks

---

grantee in the official records of local governments, but the members retain the promissory notes and mortgage servicing rights. The notes may thereafter be transferred among members without requiring recordation in the public records. [Citation.] [¶] Ordinarily, the owner of a promissory note secured by a deed of trust is designated as the beneficiary of the deed of trust. [Citation.] Under the MERS System, however, MERS is designated as the beneficiary in deeds of trust, acting as 'nominee' for the lender, and granted the authority to exercise legal rights of the lender." (*Fontenot*, *supra*, 198 Cal.App.4th at p. 267.)

standing to challenge the assignment as invalid under the PSA. (*Jenkins, supra,* 216 Cal.App.4th at p. 515.)

Saterbak also points to the presuit notice provisions in the DOT to argue the DOT contemplates her action. She quotes language in the DOT requiring the Borrower and Lender to provide notice and a reasonable opportunity to repair before "any judicial action . . . that arises from the other party's actions pursuant to this Security Instrument." However, by Saterbak's own theory, her action does not arise "pursuant to *this* Security Instrument"; it is premised instead on a violation of the PSA. The presuit notice provisions in the DOT do not contemplate her action.

Finally, Saterbak contends the deed of trust is an adhesion contract, and, therefore, restrictive language that "deprives a borrower of the right to argue her loan has been invalidly assigned" must be "conspicuous and clear." She claims, "If the assignment clause was intended by the drafter to cutoff the borrower's right to challenge the assignment, it should have used clear language to that effect. It did not." As a rule, "contracts of adhesion are generally enforceable according to their terms, [but] a provision contained in such a contract cannot be enforced if it does not fall within the reasonable expectations of the weaker or 'adhering' party." (*Fischer v. First Internat. Bank* (2003) 109 Cal.App.4th 1433, 1446 (*Fischer*).) However, "[b]ecause a promissory note is a negotiable instrument, a borrower must anticipate it can and might be transferred to another creditor" (*Fontenot, supra,* 198 Cal.App.4th at p. 272), together with the deed of trust securing it. Saterbak "irrevocably grant[ed] and convey[ed]" the Mount Helix property to the Lender; recognized that MERS (as nominee) had the right "to exercise

any or all" of the interests of the Lender; and agreed that the Note, together with the DOT, could be sold one or more times without notice to her. There is no reasonable expectation from this language that the parties intended to allow Saterbak to challenge future assignments made to unrelated third parties. (Cf. *Fischer, supra,* at pp. 1448-1449 [holding there was a triable issue of fact "as to whether the parties mutually intended to permit cross-collateralization" on two separate loans, given ambiguity between the broadly worded dragnet clause and a " 'Related Document[]' " *incorporated by reference into the loan agreement* as to whether the parties mutually intended it].)[7]

D. *The Homeowner Bill of Rights Does Not Confer Standing*

For the first time on appeal, Saterbak relies on the California Homeowner Bill of Rights (HBOR) to claim standing. She argues sections 2924.17 and 2924.12 allow her to challenge the alleged defects in MERS's assignment of the DOT to the 2007-AR7 trust. In relevant part, section 2924.17, subdivision (a), provides an "assignment of a deed of trust . . . shall be accurate and complete and supported by competent and reliable evidence." Section 2924.12, subdivisions (a) and (b) allow borrowers to bring an action for damages or injunctive relief for "a material violation of Section . . . 2924.17."

---

7 Saterbak also cites *Haynes v. Farmers Ins. Exchange* (2004) 32 Cal.4th 1198, which involved a dispute over auto insurance coverage. The court stated the general rule that "to be enforceable, any [insurance] provision that takes away or limits coverage *reasonably expected* by an insured must be 'conspicuous, plain and clear.' " (*Id.* at p. 1204, italics added.) Even if *Haynes* were relevant to the current context, there is no reasonable expectation created in the DOT that Saterbak would have the power to challenge assignments made to unrelated third parties. (*Fontenot, supra,* 198 Cal.App.4th at p. 272.)

As Saterbak acknowledges, the HBOR went into effect on January 1, 2013. (§ 2923.4.) The FAC alleges the DOT was assigned on December 27, 2011, and recorded on December 17, 2012. Saterbak fails to point to any provision suggesting that the California Legislature intended the HBOR to apply retroactively. (*Myers v. Philip Morris Companies, Inc*. (2002) 28 Cal.4th 828, 841 ["California courts comply with the legal principle that unless there is an 'express retroactivity provision, a statute will *not* be applied retroactively unless it is *very clear* from extrinsic sources that the Legislature . . . must have intended a retroactive application' "].) Therefore, the HBOR does not grant Saterbak new rights on appeal.[8]

In summary, for the reasons discussed above, we conclude Saterbak lacks standing to challenge MERS's assignment of the DOT to the 2007-AR7 trust.

II. SECTION 3412

Saterbak seeks to cancel the assignment of the DOT pursuant to section 3412. She argues that to withstand a demurrer, she merely needs to allege the assignment was void or voidable and that it could cause serious injury. We disagree.

To state a cause of action under section 3412, Saterbak must allege the assignment was void or voidable *against her*. (§ 3412 ["A written instrument, in respect to which

---

8 Saterbak contends the notice of trustee's sale was recorded after the HBOR went into effect. However, the FAC challenges MERS's assignment of the DOT to the 2007-AR7 trust, not the notice of trustee's sale. We further reject Saterbak's argument that the HBOR "overruled" *Jenkins* and cases citing it: *Jenkins* was decided *after* the HBOR went into effect. (*Jenkins*, *supra*, 216 Cal.App.4th 497 [decided May 17, 2013].)

there is reasonable apprehension that if left outstanding it may cause serious injury to a person *against whom* it is void or voidable, may, upon his application, be so adjudged, and ordered to be delivered up or canceled" (italics added)]; see also *Johnson v. PNC Mortg.* (N.D.Cal. 2015) 80 F.Supp.3d 980, 990 (*Johnson*) [section 3412 requires "the challenged instrument be void or voidable *against the party seeking to cancel it*"].) *Johnson* dismissed a similar cause of action under section 3412 because the plaintiffs, borrowers like Saterbak, failed to "allege a plausible case that the assignment is 'void or voidable' against them." (*Johnson*, *supra*, at p. 990.) Here, Saterbak fails to state a cause of action under section 3412 because she cannot allege that MERS's assignment of the DOT to the 2007-AR7 trust was void or voidable against her.

Saterbak also fails to allege "serious injury." She argues she "faces the prospect of losing her home due to the actions of an entity that has no power to foreclose because it does not own her [DOT]." However, even if the assignment was invalid, it could not "*cause* serious injury" under the statute because her obligations on the Note remained unchanged. (§ 3412, italics added).) For example, in *Johnson*, *supra*, 80 F.Supp.3d 980, borrowers sought to cancel the assignment of their deed of trust, claiming alleged infirmities in the assignment cast a shadow on their title and continued to ruin their credit. The court rejected this theory because the alleged defects did not change the borrowers' payment obligations, and the borrowers did not deny they had defaulted. The court concluded: "It is not really the assignment, then, or its challenged provenance, that has stained their credit report. It is the fact that they defaulted." (*Id.* at p. 989.) Likewise, here, the allegedly defective assignment did not alter Saterbak's payment obligations

under the Note. Saterbak does not deny she defaulted or that her debt remains in arrears. Consequently, she cannot demonstrate how the allegedly invalid assignment could "*cause* serious injury" within the meaning of section 3412 if left outstanding. (§ 3412, italics added.)

Finally, because a cause of action to cancel a written instrument under section 3412 sounds in equity, a debtor must generally allege tender or offer of tender of the amounts borrowed as a prerequisite to such claims. The tender requirement "is based on the theory that one who is relying upon equity in overcoming a voidable sale must show that he is able to perform his obligations under the contract so that equity will not have been employed for an idle purpose." (*Dimock v. Emerald Properties* (2000) 81 Cal.App.4th 868, 878, italics omitted.) The tender rule is not absolute; tender is not required to cancel a written instrument that is *void* and not merely voidable. (*Id.* at p. 876; *Smith v. Williams* (1961) 55 Cal.2d 617, 620-621; *Ram v. OneWest Bank, FSB* (2015) 234 Cal.App.4th 1, 11.) As discussed *ante,* we conclude the alleged defects merely rendered MERS's assignment of the DOT to the 2007-AR7 trust *voidable* under New York law. In any event, because we affirm the judgment on standing grounds, we do not decide whether Saterbak was required to plead the ability or willingness to tender to cancel the assignment pursuant to section 3412.

III. LEAVE TO AMEND

We must consider whether Saterbak has demonstrated a reasonable probability that she could cure the defects that we have identified. (*Schifando v. City of Los Angeles*, *supra*, 31 Cal.4th at p. 1081.) Saterbak contends she could amend her complaint to

"argue that the language in her [DOT] gives her the right to attack a void assignment of her loan." As discussed in detail above, we conclude the DOT does not confer this right. Because Saterbak has not shown how she could remedy her lack of standing to challenge MERS's assignment of the DOT to the 2007-AR7 trust, we conclude the trial court properly sustained Defendant's demurrer to the FAC without leave to amend.

DISPOSITION

The judgment is affirmed. Respondent 2007-AR7 trust shall recover its costs on appeal.

MCCONNELL, P. J.

WE CONCUR:

HALLER, J.

MCINTYRE, J.

EXHIBIT TWO TO PETITION

FOR REVIEW

ORDER DENYING PETITION

FOR REHEARING

COURT OF APPEAL, FOURT

DIVISION

STATE OF CA

LAURA SATERBAK,

Plaintiff and Appellant,

v.

JP MORGAN CHASE BANK, N.A. as attorney-in-fact for CITIBANK, N.A. as Trustee for STRUCTURED ASSET MORTGAGE INVESTMENT II TRUST 2007-AR7 MORTGAGE PASS-THROUGH CERTIFICATES 2007-AR7,

Defendant and Respondent.

D066636

(Super. Ct. No. 37-2014-00084605-CU-OR-CTL)

THE COURT:

The petition for rehearing is denied.

MCCONNELL, P. J.

Copies to: All parties