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6 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
7 COUNTY OF GLENN

8 **DEUTSCHE BANK NATIONAL TRUST**  
9 **COMPANY, AS TRUSTEE OF THE**  
10 **INDYMAC IMSC MORTGAGE**

11 Plaintiff

12 vs.

13 **SARINA ANN NELSON, and Does 1-50**  
14 **inclusive**

15 Defendants

Case No.: 10NUD00320

**DEFENDANT SARINA NELSON'S  
TRIAL BRIEF**

Dept: TBD  
Trial Date: 01/24/2011  
Judge: Jeri Hamlin

16 **INTRODUCTION**

17 DEFENDANT Sarina Ann Nelson, resides at 4081 County Rd., #203,  
18 Hamilton City, CA 95951. Various members of the Nelson family  
19 have owned the property for more than 100 years. On October 8,  
20 2010, PLAINTIFF, Deutsche Bank National Trust, hereinafter  
21 referred to as DB, filed an Unlawful Detainer action against  
22 DEFENDANT, Sarina Ann Nelson. DEFENDANT asserts as her first  
Affirmative Defense, that DB lacks standing for this action, as  
follows:

23 **I.**

24 **DB IS NOT A REAL PARTY IN INTEREST IN THIS ACTION AND**  
25 **THEREFORE LACKS STANDING**

26 1. PLAINTIFF has failed to provide to the court proof of  
27 perfected title on the property in question, located at 4081  
28 County Rd, #203, Hamilton City, CA 95951.

1 2. PLAINTIFF falsely states to the court in paragraph #4 of its  
2 complaint that it is the owner of the property described above.

3 3. PLAINTIFF falsely states to the court in paragraph #5 of its  
4 complaint that "On March 26, 2010, PLAINTIFF acquired the  
5 property at a duly conducted foreclosure sale and obtained a  
Trustee's Deed upon Sale."

6 4. In fact, an Assignment of Deed of Trust (Attached as Exhibit  
7 "A") purporting to transfer all rights under the original Deed of  
8 Trust dated 03/01/2007, from OneWest Bank, FSB to DB was signed  
9 by an officer of OneWest Bank, FSB and notarized on 02/25/2010.  
10 One full month before the date PLAINTIFF claims to have acquired  
11 the property "at a duly conducted foreclosure sale" (Emphasis  
added) which allegedly took place on 3/26/2010.

12 5. There exists a serious cloud over the title of the property in  
13 question. North State Title, Glenn County, CA recorded document  
14 No. 2009-5065 on 10/23/2009. (Attached as Exhibit "B") The  
15 document is titled Assignment of Deed of Trust, and purports to:  
16 1) have been executed on 6/23/2009, and 2) to transfer all  
17 interest in the original Deed of Trust, dated 03/01/2007, from  
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., hereinafter  
referred to as MERS, to OneWest Bank, FSB.

18 6. DEFENDANT asserts and intends to prove: 1) that MERS was not a  
19 trustee under the Deed of Trust and did not have the legal  
20 authority to assign the deed of trust; and, 2) that the purported  
21 Assignment of Deed of Trust was signed by Dennis Kirkpatrick as  
22 Vice President for MERS and well documented as a "Robo-Signer."  
23 Therefore the transaction described above, purportedly executed  
24 on 6/23/2009 and recorded as described above on 10/23/2009, was  
and is null and void.

25 7. DEFENDANT asserts and intends to prove that, as a result of  
26 the nullity of the transaction described in paragraph 6 above,  
27 chain of title to the property was broken and therefore any  
subsequent purported assignments were also null and void.  
28 Therefore, DB does not hold valid title to the property which is  
the subject of this litigation.

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II.

**THE VERIFICATION OF THE COMPLAINT IS INVALID**

8. DEFENDANT asserts that the Verification of the Complaint is not only invalid but is blatantly false.

9. PLAINTIFF'S attorney, Edward T. Weber, ESQ, who states in the verification that his office is in Orange County, CA, signed and dated the verification, wherein it states "that all officers of the Plaintiff are unable to make the verification **because they are absent from said County...**" (Emphasis added).

10. A copy of the internet website page for office locations of Deutsche Bank National Trust Company (Attached as Exhibit "C") lists 5 offices in Orange County, California. An officer of DB is the appropriate signer on a Verification of Complaint, as that person would have access to the internal records of DB and be able to verify the truth of the facts stated in the Complaint.

III.

**PLAINTIFF HAS FAILED TO PROVIDE A COPY OF  
THE ORIGINAL PROMISSORY NOTE**

1. DEFENDANT requested a copy of the original Promissory Note, which was alleged to have been signed on 3/1/2007, from her original lender.

2. DEFENDANT was told by a representative of the company that he was unable to give her a copy of the Note, as it had been sold, but he could not tell DEFENDANT to whom it was sold.

3. DEFENDANT believes and intends to prove that the original Promissory Note was "securitized" and converted to a stock. As a result, there was no longer a negotiable instrument which could be secured by the Deed of Trust.

4. The Deed of Trust cannot stand alone. If DB does not own the Promissory Note, then the Deed of Trust it allegedly held fails and is unenforceable at law.

**CONCLUSION**

1 The chain of title on the property which is the subject of this  
2 litigation has been broken. DB does not, and did not have the  
3 right to foreclose on the property; and, does not, and did not  
4 have the right to sell or purchase the property; and, does not  
5 and did not have standing to file an Unlawful Detainer complaint  
6 against DEFENDANT.

6 PLAINTIFF'S complaint fails due to an invalid Verification.  
7 DEFENDANT hereby requests a 90 day continuation of this Unlawful  
8 Detainer action to allow DEFENDANT time to conduct Discovery in  
9 order to gather the necessary information and documentation to  
10 prove DEFENDANT'S assertions that have been made herein.

10 DEFENDANT pleads with the court that it would be a serious  
11 miscarriage of justice to allow PLAINTIFF to evict her from her  
12 property, which her family has owned for over 100 years, without  
13 being made to prove that PLAINTIFF is the true and legal owner of  
14 the title to the property.

14 Date: 1/14/2011

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16 Helen A. Duree  
17 Attorney for Defendant Sarina Nelson  
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