

Sarina Nelson
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In Propria Persona

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF GLENN

CASE NO.:

SARINA NELSON,

Plaintiff

vs

DEUTSCHE BANK NATIONAL TRUST
COMPANY, AS TRUSTEE OF THE INDYMAC
IMSC MORTGAGE;
REGIONAL SERVICE CORPORATION a California
Corporation as Trustee;
AND DOES 1 - 25

Defendants

PLAINTIFF'S COMPLAINT
FOR: (1) NEGLIGENCE; (2)
FRAUD; (3) WRONGFUL
FORECLOSURE; (4) BREACH
OF CONTRACT; (5) BREACH
OF IMPLIED COVENANT OF
GOODFAITH AND FAIR
DEALING; (6) UNJUST
ENRICHMENT; (7)
INJUNCTIVE RELIEF; and (8)
QUIET TITLE.

TO THIS HONORABLE COURT, ALL PARTIES AND THEIR ATTORNEYS OF
RECORD HEREIN:

Plaintiff hereby alleges as follows:

PARTIES

1. Sarina Nelson is, and was at all times during the actions complained of herein, a
resident of Glenn County, California.

2. Deutsche Bank National Trust Company , as Trustee of the IndyMac IMSC,
Mortgage hereinafter referred to as Deutsche Bank, and Mortgage Electronic Registration
Systems, Inc hereinafter referred to as MERS and including above mentioned Lenders,

Trustee's, Beneficiaries and authorized agents that may be included in the DOES 1 – 25, doing business in Glenn County.

GENERAL ALLEGATIONS

3. The chain of events leading up to the present case began in 2007 when the Plaintiff (a) signed and initialed a loan packet presented to her by Mortgage Sense at her place of employment in Tehama County. The loan was based on her existing single-family residence located at 4081 Road 203, Hamilton City, California which has been in her family for over 100 years.

4. The loan signed on March 01, 2007 initiated the recording of Deed of Trust showing lender as American Mortgage Network, inc. Delaware, Trustee First American Title Insurance Co. with MERS as Beneficiary. All payments were billed by and paid to IndyMac in an amount above the payment amount initially presented by Mortgage Sense.

5. April 12, 2007 the previous lender, who was paid off by above mentioned loan proceeds recorded Substitution of Trustee and Deed of Reconveyance from Wells Fargo Bank (previous lender) TO Town and Country Title Services Inc with return to Sarina Nelson.

6. Although payments were much higher than expected Plaintiff continued making payments to IndyMac with help from her live-in fiancé for nearly 2 years. Plaintiff then contacted the bank, IndyMac to see about refinancing to get the payments down closer to the initial anticipated amount.

7. Immediately after first contact her fiancé had a heart attack. Plaintiff was told by IndyMac that rather than a refinance a modification was available and told to stop making payments because to qualify the loan she would have to be behind in payments. She was waiting for modification when in May her fiancé passed away. Within 2 weeks IndyMac then suggested she apply for a hardship modification which she did.

1 8. As the information was being provided to IndyMac for modification Plaintiff
2 received a notice from a Regional Services Corporation that property was going into
3 foreclosure. Plaintiff contacted IndyMac bank with concern and was told not to worry
4 that loans are transferred all the time and that modification would take care of the back
5 payments as they would be added to the end of the new modified loan.

6 9. In July Plaintiff received a Notice of Default and Election to Sell under Deed Of
7 Trust. Document had been recorded in the county of Glenn on 07/15/2009 stating that
8 Regional Service Corp is either duly appointed Trustee, (or) substitute Trustee (or) acting
9 as agent for the Beneficiary. Document was not notarized, as required by law, but was
10 signed by a Marghong which represented themselves as an agent for Regional Service
11 Corp. Trustee. Filed in Glenn County records along with said Notice of Default was a
12 Declaration Pursuant to Cal.Civ. Code Section 2923.5 (b) by IndyMac Mortgage
13 Servicing. The property was wrongfully foreclosed. The specific events are described
14 more particularly, as follows:
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17 **American Mortgage Network - Original Mortgage**

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19 10. In March 2007, the Plaintiff initiated a promissory note on the "Subject Property"
20 with Mortgage Sense. No specific details can be made as the full and true copy of said
21 promissory note was never mailed back to her after the initial signing at her place of
22 employment. (All records, dates, amounts etc have been concluded from documents filed
23 in County of Glenn Records and personal payment records to IndyMac)

24 11. Payments beginning in April 2007 to IndyMac Bank on Loan Number
25 3002723249 .

26
27 12. Beginning near the end of 2008 Plaintiff began to question the amounts of her
28 monthly payments going out and sought help from IndyMac to research the possibility of
a refinance to lower the payments and the end of the year.

1 13. IndyMac suggested a better alternative would be a modification and that to be
2 approved the mortgage payments would need to be in arrears and to stop making
3 payments.

4 14. In January 2009, Plaintiff's livein fiancé' suffered a heart attack and was unable
5 to work. With less income it was apparent that the modification would be the best
6 solution.

7 15. While application was in the process for the modification the fiancé' passed away
8 in May. Within 2 weeks Plaintiff was advised by a representative of IndyMac bank that
9 a "hardship" modification would be the necessary course of action and Plaintiff
10 proceeded to apply for the "hardship" modification.
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12 16. In mid-July Plaintiff received the above mentioned Notice of Default and
13 Election to Sell (states: "to secure obligations in favor of Mortgage Electronic
14 Registration Systems, Inc., as Beneficiary"). (Assignment of Deed of Trust recorded on
15 10/23/2009 in Glenn County Records states that MERS had set over beneficial interest
16 under Deed of Trust to OneWest Bank on 06/23/2009.) Numerous contacts were initiated
17 by the Plaintiff to IndyMac bank on what to do. Plaintiff was advised to ignore the Notice
18 of Default and Election to Sell because the Modification was underway and would not
19 only stop the Foreclosure but the payments that were in arrears would simply be added to
20 the end of the Modification Loan.
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22 17. During the following months Plaintiff continued to contact IndyMac on a regular
23 basis questioning why the Modification was not finished because she was continually
24 being contacted through mailings and postings that her home was being Foreclosed.
25 Plaintiff continued to supply IndyMac with what seemed a never ending request for
26 documents and information needed to complete the Modification and several times
27 resubmitting the same information that had previously been submitted.
28

1 18. Near the end of October 2009 Plaintiff received a non-notarized Notice of
2 Trustee Sale signed by Jean Greagor as an Authorized Agent of Regional Service
3 Corporation.

4 19. Due to Plaintiff now taking care of her late partner's and her previous obligations
5 was forced into filing a Bankruptcy on other payments to assure she would be able to
6 have enough money to make the loan payments on the Modification Loan. The Subject
7 Property was not taken into consideration for the Bankruptcy, this was a planned
8 obligation that Plaintiff intended to maintain under the new Modified payment plan
9 expected any day from and through IndyMac.
10

11 20. The Plaintiff was then notified that Plaintiff did not qualify for the Modification
12 Loan.

13 21. Subject Property was again scheduled for a Trustee's Sale on March 26th 2010 at
14 10:00 AM in the Lobby of the Building Located at 360 W. Sycamore St., in Willows
15 California. Plaintiff's mother and a sister attended at the scheduled date and time and
16 was told that no one showed up to bid and the sale did not in fact take place. When
17 questioned the representative at the North Title Co. explained in person that because no
18 one showed up that the property it would simply go back to the owner of the note.
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21 **FIRST CAUSE OF ACTION**

22 **(Negligence)**

23 22. The Plaintiff incorporates herein by reference the allegations made in paragraphs
24 3 through 21, includes, as though fully set forth herein.

25 23. The Plaintiff incorporates herein by reference the allegations made in paragraphs
26 above that at all times the Defendants, acting as Plaintiff's lender and loan servicers had a
27 duty to exercise reasonable care and skill to maintain proper and accurate loan records
28 and perform procedures according to law and the processes set forth in said laws. This

1 would include transfer of deeds, notices, truthful reporting and include, but not limited to,
2 the proper loan numbers associated with alleged promissory notes.

3 24. In taking the actions alleged above, and in failing to take the actions as alleged
4 above, the Defendants breached their fiduciary duty of due care and skill to the Plaintiff
5 in the servicing of the Plaintiff's loan by, among other things, failing to properly and
6 accurately recording loan numbers, preparing and filing false documents, and foreclosing
7 on the Subject Property, without having the legal authority and/or proper documentation
8 to do so.

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10 25. As a direct and proximate result of the negligence and carelessness of the
11 Defendants as set forth above, the Plaintiff suffered general and special damages and
12 irreparable harm in an amount to be determined at trial.

13 14 **SECOND CAUSE OF ACTION**

15 **(Fraud)**

16 26. The Plaintiff incorporates herein by reference the allegations made in paragraphs
17 3 through 21, includes, as though fully set forth herein.

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19 27. The Defendants engaged in a pattern and practice of defrauding the Plaintiffs in
20 that, during the life of the mortgage loan, the Defendants failed to properly credit
21 payments made to the appropriate loan number as recorded on the Deed of Trust.

22 28. Documents submitted were not correct and complete with proper reference to
23 Trustee, Beneficiary and/or substitutes of Trustee and Beneficiary including but not
24 limited to.

25 29. Additionally, the Defendants concealed material facts known to them but not to
26 the Plaintiff regarding payments, notices, assignments, transfers, late fees and charges
27 with the intent to defraud the Plaintiff. Specifically, the Plaintiff alleges on information
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1 and belief that the Defendants re-acquired the Plaintiff's note from the investors in the
2 "mortgage backed security" as a non-performing, non-secured debt.

3 30. The Defendants made the above-referenced false representations, concealments
4 and non-disclosures with knowledge of the misrepresentations, intending to induce the
5 Plaintiff's reliance, which the unsuspecting Plaintiff justifiably relied upon, resulting in
6 damage to their credit standing, costs and loss of their property. The Plaintiff was
7 unaware of the true facts. Had Plaintiff known the true facts, the Plaintiff, among other
8 things, would not have maintained the Defendants as their lender, servicer and trustee
9 (and their alleged agents) and/or would have taken legal action immediately to save the
10 Subject Property.
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12 31. As a result of the Defendants' fraudulent conduct, the Plaintiff has suffered
13 compensatory, general and special damages in an amount to proof. Additionally, the
14 Defendants acted with malice, fraud and/or oppression and, thus, the Plaintiff is entitled
15 to an award of punitive damages.
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17 **THIRD CAUSE OF ACTION**

18 **(Wrongful Foreclosure)**

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20 32. The Plaintiff incorporates herein by reference the allegations made in paragraphs
21 3 through 21, includes, as though fully set forth herein.

22 33. The Plaintiff is informed and believes and thereon alleges that after the
23 origination and funding of their loan, it was sold to investors as a "mortgage backed
24 security" and that none of the Defendants in this action owned this loan, or the
25 corresponding note. Moreover, none of the Defendants in this action were lawfully
26 appointed as trustee or had the original note assigned to them. Accordingly, none of the
27 Defendants in this action had the right to declare default, cause notices of
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1 default to be issued or recorded, or foreclose on the Plaintiff's interest in the Subject
2 Property. The Defendants were not the note holder or a beneficiary at any time during the
3 foreclosure process with regard to the Plaintiff's loan.

4 34. The Plaintiff further alleges on information and belief that none of the
5 Defendants in this action are beneficiaries or representatives of the beneficiary and, if the
6 Defendants allege otherwise, they do not have the original note to prove that
7 they are in fact the party with standing who is authorized to conduct the foreclosure. In
8 addition, as the original note was sold and its chain of title broken when it was converted
9 into stock for a mortgage backed security, if or when the Defendants
10 re-acquired the original note, they did so in the capacity of a debt collector and not as a
11 holder in due course.

13 35. The Plaintiff further alleges on information and belief that the loan was sold or
14 transferred without notifying the Plaintiff in writing. Therefore, the loan is void of legal
15 rights to enforce it.

16 36 Additionally, the Defendants violated California Civil Code §2923.5(a), which
17 requires a "mortgagee, beneficiary or authorized agent" to "contact the borrower or
18 person by telephone in order to assess the borrower's financial situation and explore
19 options for the borrower to avoid foreclosure. "Section 2923.5(b) requires a default notice
20 to include a declaration "from the mortgagee, beneficiary, or authorized agent" of
21 compliance with section 2923.5, including attempt "with due diligence to contact the
22 borrower as required by this section."

24 37. None of the Defendants contacted the Plaintiff to discuss their financial situation.
25 Moreover, none of the Defendants explored options with the Plaintiff to avoid
26 foreclosure. Additionally, none of the Defendants informed the Plaintiff of the right to
27 have a meeting within 14 days of said contact. Accordingly, the Defendants did not fulfill
28 their legal obligation to the Plaintiff.

1 38. Thus, the Defendants engaged in a fraudulent foreclosure of the Subject Property
2 in that the Defendants did not have the legal authority to foreclose on the Subject
3 Property and, alternatively, if they had the legal authority, they failed to comply with
4 Civil Code Section 2923.5 and 2923.6. Further, the Defendants, lacking standing as a
5 holder in due course and in their capacity as a debt collector, had other less drastic
6 remedies available to them, including finding or re-instating the Plaintiff's loan or
7 alternatively seeking a judgment against the Plaintiff for his debt.

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9 39. Should the Plaintiff be deemed to be in default, the Plaintiff tenders payment on
10 the \$282,000,00 loan to the Defendants.

11 40. A defaulted borrower is "required to allege tender of the amount of [the lender's]
12 secured indebtedness in order to maintain any cause of action for irregularity in the sale
13 procedure." Abdallah v. United Savings Bank, 43 Cal.App.4th 1101, 1109, 51 Cal.Rptr.2d
14 286 (1996), cert. denied, 519 U.S. 1081, 117 S.Ct. 746 (1997). In FPCI RE-HAB 01 v. E
15 & G Investments, Ltd., 207 Cal.App.3d 1018, 1021, 255 Cal.Rptr. 157 (1989), the
16 California Court of Appeal explained:

17 . . . generally "an action to set aside a trustee's sale for irregularities in sale notice or
18 procedure should be accompanied by an offer to pay the full amount of the debt for which
19 the property was security." . . . This rule . . . is based upon the equitable maxim that a
20 court of equity will not order a useless act performed . . . "A valid and viable tender
21 of payment of the indebtedness owing is essential to an action to cancel a voidable sale
22 under a deed of trust." . . . The rationale behind the rule is that if Plaintiffs could not have
23 redeemed the property had the sale procedures been proper, any irregularities in the sale
24 did not result in damages to the Plaintiffs. (Citations omitted.)

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26 41. An action to set aside a foreclosure sale, accompanied by an offer to redeem,
27 does state a cause of action which a court of equity recognizes. Karlsen v. American Sav.
28 & Loan Assn., 15 Cal.App.3d 112, 117, 92 Cal.Rptr. 851 (1971). The basic rule is that an

offer of performance is of effect if the person making it is able to perform. Karlsen, 15 Cal.App.3d at 118, 92 Cal.Rptr. 851 (citing Cal. Civ. Code, § 1495.) Simply put, if the offeror "is with the money necessary to make the offer good and knows it" the tender is with legal force or effect. Karlsen, 15 Cal.App.3d at 118, 92.

42. The Plaintiff's ability to make monthly promissory note payments reflects an ability to tender amounts owed to not bar his claims and requested relief. The Plaintiff pleads and offers to a tender to pay his debt.

43. As a result of the above alleged wrongs, the Plaintiff has suffered general and special damages in an amount to be determined at trial.

FOURTH CAUSE OF ACTION

(Breach of Contract)

44. The Plaintiff incorporates herein by reference the allegations made in paragraphs 3 through 21, includes, as though fully set forth herein.

45. The Plaintiff's loan agreement set forth conditions under which the deed of trust could be assigned or transferred.

46. Defendants violated those conditions in successive, illegal attempts to assign the Trust Deed to third parties.

47. As a proximate result of the Defendants' breaches, the Plaintiff has suffered compensatory damages in an amount to be proven at trial.

FIFTH CAUSE OF ACTION

(Breach of Implied Covenant of Good Faith and Fair Dealing)

48. The Plaintiff incorporates herein by reference the allegations made in paragraphs 3 through 21, includes, as though fully set forth herein.

1 49. Every contract imposes upon each party a duty of good faith and fair dealing in
2 its performance and its enforcement. This implied covenant of good faith and fair dealing
3 requires that no party will do anything that will have the effect of impairing, destroying,
4 or injuring the rights of the other party to receive the benefits of their agreement. The
5 covenant implies that in all contracts each party will do all things reasonably
6 contemplated by the terms of the contract to accomplish its purpose. This covenant
7 protects the benefits of the contract that the parties reasonably contemplated when
8 they entered into the agreement.
9

10 50. Alternatively, if the note and deed of trust was validly and properly assigned to
11 the Defendants, the Defendants did not act in good faith and did not deal fairly with the
12 Plaintiff in connection with the note and deed of trust when they: (1) Illegally attempted
13 to transfer the deed of Trust by assignments; (2) back dated documents; (3) failed to
14 notarize the Notice of Default and Election to sell; (4) failed to notarize both Notice of
15 Trustee's Sale documents; (5) did not give a copy of the original loan documents to
16 Plaintiff.
17

18 51. The Defendants enjoyed substantial discretionary power affecting the rights of
19 the Plaintiff during the events alleged in this Complaint. They were required to exercise
20 such power in good faith.

21 52. The Defendants engaged in such conduct to drive the Plaintiff into foreclosure so
22 that they could acquire the Subject Property. These actions were a bad faith breach of
23 the contract between the Plaintiff and the Defendants which show that they had no
24 intention of performing the contract, consisting of the original note and deed of trust, in
25 good faith.
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27 53. As a result of the Defendants' breaches of this covenant, the Plaintiff has suffered
28 general and special damages in an amount to be determined at trial.

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54. The Plaintiff incorporates herein by reference the allegations made in paragraphs 3 through 21, includes, as though fully set forth herein.

56. By reason of the foregoing, the Plaintiff seeks restitution from the Defendants, and an order of this Court disgorging all profits, benefits, and other compensation obtained by the Defendants from their wrongful conduct.

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57. The Plaintiff incorporates herein by reference the allegations made in paragraphs 3 through 21, includes, as though fully set forth herein.

59. The Plaintiff has (1) a combination of probable success and the possibility of irreparable harm, and/or (2) serious questions are raised and the balance of hardship tips in his favor. *Arcamuzy v. Continental Air Lines, Inc.*, 819 F.2d 935, 937 (9th Cir. 1987).

COMPLAINT FOR DAMAGES

60. Injunctive relief to halt post-foreclosure proceedings serves a legitimate purpose. Furthermore, equitable remedies are available in view of an irreparable injury, as a real or immediate threat that the Plaintiff will be wronged again – a likelihood of substantial and immediate irreparable injury. *City of Los Angeles v. Lyons*, 461 U.S. 95, 111, 103 S.Ct. 1660, 1670 (1983) (quoting *O’Shea*, 414 U.S. at 502, 94 S.Ct. at 679).

61. The Plaintiff provides credible, substantiated evidence of identifiable, potentially repeatable wrongs and supports his injunctive relief request with adequate legal and factual grounds.

EIGHTH CAUSE OF ACTION

(Quiet Title)

62. The Plaintiff incorporates herein by reference the allegations made in paragraphs 3 through 21, includes, as though fully set forth herein.

63. The Plaintiff is the equitable owner of the Subject Property which has the following legal description:

Lot 13 of the Van Syckle Tract, laid down on the official map thereof filed in the office of the Recorder of Glenn County, California, on March 13, 1905. Also known as 4081 County Road 203, Hamilton City, California, County of Glenn

64. The Plaintiff seeks to quiet title against the claims of the Defendants; ALL PERSONS UNKNOWN, CLAIMING ANY LEGAL OR EQUITABLE RIGHT, TITLE, ESTATE, LIEN, OR INTEREST IN THE PROPERTY DESCRIBED IN THE COMPLAINT ADVERSE TO PLAINTIFF’S TITLE, OR ANY CLOUD ON Plaintiff’S TITLE THERETO; and DOES 1 through 25 (collectively referred to herein as the “Title Defendants”) as the Title Defendants hold themselves out as entitled to fee simple ownership of the Subject Property by and through their purchase of the property at the trustee’s sale held on or about 10 September 2010. In fact, the Title Defendants had no

1 right to title or interest in the Subject Property and no right to entertain any rights of
2 ownership including the right to foreclosure, offering the Subject Property for sale at
3 a trustee's sale, demanding possession or filing cases for unlawful detainer. Nevertheless,
4 the Title Defendants proceeded with a non-judicial foreclosure sale, through Northwest
5 Trustee Services as alleged trustee, illegally and with unclean hands. The Plaintiff is
6 willing to tender the amount received subject to equitable adjustment for the damage
7 caused to the Plaintiff by the Title Defendants' activities.

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9 65. The Plaintiff seeks to quiet title. Plaintiff seeks a judicial declaration that the title
10 to the Subject Property is vested in the Plaintiff alone and that the Title Defendants and
11 each of them be declared to have no interest estate, right, title or interest in the Subject
12 Property and that the Title Defendants, their agents and assigns, be forever enjoined from
13 asserting any estate, right title or interest in the Subject Property subject to the Plaintiff's
14 rights.

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17 **PRAYER FOR RELIEF**

18 Wherefore, Plaintiffs pray for judgment against the Defendants and each of them, jointly
19 and severally, as follows:

- 20 1. For a declaration of the rights and duties of the parties, specifically that the foreclosure
21 of the Plaintiffs' residence was wrongful.
- 22 2. For issuance of an Order canceling all Trustee's Deed Upon Sale.
- 23 3. To vacate the Trustee's Deed.
- 24 4. To vacate and set aside the foreclosure sale.
- 25 5. To quiet title in favor of the Plaintiff and against the Defendants.
- 26 6. For compensatory, special, general and punitive damages according to proof against all
27 of the Defendants.
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1 7. For civil penalties pursuant to statute, restitution, injunctive relief and reasonable
2 attorneys fees according to proof.

3 8. For reasonable costs of suit and such other and further relief as the Court deems
4 proper.

5 DATED: 04 April 2011

6 Sarina Nelson
7 in Pro Per

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9 _____
10 Sarina Nelson – Plaintiff
11 In Propia Persona
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