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MOT.

1 Lawrence J. Dreyfuss, Bar No. 76277  
2 Bruce W. Dannemeyer, Bar No. 107243  
3 THE DREYFUSS FIRM  
4 A Professional Law Corporation  
5 7700 Irvine Center Drive, Suite 710  
6 Irvine, California 92618  
7 (949) 727-0977; Facsimile (949) 450-0668

**FILED**  
LOS ANGELES SUPERIOR COURT  
NOV 30 2011  
JOHN A. CLARKE, CLERK  
*Green*  
BY E. LEON, DEPUTY

6 Attorneys for defendant WELLS FARGO BANK, N.A.

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF LOS ANGELES, EAST DISTRICT

10 CABRERA, MIGUEL A.,

11 Plaintiff,

12 vs.

13 UNIVERSAL AMERICAN MORTGAGE )  
14 COMPANY OF CALIFORNIA; WELLS )  
15 FARGO BANK, N.A.; and all persons or )  
16 entities unknown, claiming any legal or )  
17 equitable right, title, estate, lien or interest in )  
18 the property described in this Complaint )  
19 adverse to Plaintiff's title, or any cloud upon )  
20 Plaintiff's title thereto; and DOES 1 through )  
21 25, )

22 Defendants.

) Case No.: KC 062236

) Judge Salvatore Sirna

) Department G

) NOTICE OF HEARING ON DEMURRER  
) OF DEFENDANT WELLS FARGO BANK,  
) N.A. TO COMPLAINT; DEMURRER TO  
) COMPLAINT; MEMORANDUM OF  
) POINTS AND AUTHORITIES

) DATE: January 31, 2012

) TIME: 8:30 a.m.

) DEPT: G

23 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

24 PLEASE TAKE NOTICE that on January 31, 2012 at 8:30 a.m. or as soon thereafter as  
25 the matter may be heard in Department G of the Los Angeles County Superior Court located at  
26 400 Civic Center Plaza, Pomona, California, a hearing will be held on the demurrer of defendant  
27 Wells Fargo Bank, N.A. to plaintiff's complaint.

28 The demurrer will be based upon this notice, the accompanying demurrer and  
memorandum of points and authorities, the pleadings on file in this action, including the


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CIT/CASE: KC062236 LEA/DEM.

1 Complaint, and upon such further evidence and argument as may be presented at or before the  
2 hearing.

3 DATED: November 29, 2011

4 THE DREYFUSS FIRM  
a professional law corporation

5  
6 By:   
7 BRUCE DANNEMEYER  
8 Attorneys for defendant WELLS FARGO BANK,  
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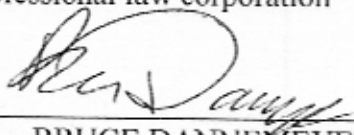
1 DEMURRER TO COMPLAINT

2 Defendant Wells Fargo Bank, N.A. ("Wells Fargo") demurs to the complaint on the  
3 following grounds:

- 4 1. The only cause of action, for quiet title, fails to state facts sufficient to constitute  
5 a cause of action against Wells Fargo. (Code Civ. Proc., § 430.10, subd. (e)).

6 DATED: November 29, 2011

7 THE DREYFUSS FIRM  
8 a professional law corporation

9 By:   
10 BRUCE DANNEMEYER  
11 Attorneys for defendant WELLS FARGO BANK,  
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1                    MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF  
2                    DEMURRER TO COMPLAINT

3                    FACTS

4                    This action seeks to eliminate the deed of trust on plaintiff's home on the grounds the  
5 loan was securitized, i.e. packaged with other loans and sold on Wall Street. Plaintiff is not in  
6 foreclosure. Plaintiff hopes to own his home free and clear without paying off the mortgage.

7                    Plaintiff obtained the loan in question from Wells Fargo in December 2005. (Complaint,  
8 ¶ 11.) No foreclosure is pending. (Complaint, unnumbered paragraph, p. 2, lines 4-7.) The  
9 complaint alleges the deed of trust securing the Wells Fargo loan has been securitized.  
10 (Complaint, unnumbered paragraph, p. 2, line 28 – p. 3, line 4.) As a result of the securitization,  
11 "any and all rights, interests and title has been extinguished, relinquished, and or detached as to  
12 any and all [deeds of trust], documents, or alleged secured instruments referenced herein."  
13 (Complaint, unnumbered paragraph, p. 3, lines 5-7.) Plaintiff alleges that because of the  
14 securitization, there is no current holder of a valid deed of trust. (Complaint, ¶ 12.) None of the  
15 parties claiming any rights under a deed of trust have enforcement rights against plaintiff or his  
16 home. (Complaint, ¶ 13.) Plaintiff claims his home is free of any deed of trust. (Complaint, ¶  
17 15.) He seeks to quiet title. (Complaint, prayer for relief, p. 7.)

18                    ARGUMENT

19                    **1. SECURITIZATION DOES NOT AFFECT THE VALIDITY OF A DEED**  
20                    **OF TRUST.**

21                    Securitization is a process by which loans are packaged for sale to investors on Wall  
22 Street in much the same manner as stock. (See generally, *Bank of America Corp. v. Superior*  
23 *Court* (2011) 198 Cal.App.4th 862, 865.) It has been blamed for the artificial inflation, then  
24 precipitous decline in property values. It has been characterized as a fraudulent scheme  
25 intended to bilk investors and borrowers. (*Id.* at pp. 865-866.) It has been the centerpiece of  
26 attempts to enjoin foreclosures. (*Ibid.*)

27                    California courts, however, have universally rejected efforts stop foreclosure because of  
28 securitization. In fact, those lawsuits have been dismissed at the pleading stage. In *Bank of*  
*America Corp. v. Superior Court, supra*, the appellate issued a writ directing the trial court to

1 sustain a demurrer without leave to amend. With respect to securitization, the court held the  
2 lender "had no independent duty to disclose to its borrowers its alleged intent to defraud its  
3 investors by selling them mortgage pools at inflated values." (*Id.* at pp. 872-873.) In *Robinson*  
4 *v. Countrywide Home Loans, Inc.* (2011) 199 Cal.App.4th 42, 46, the court affirmed the  
5 sustaining of a demurrer without leave to amend, citing *Gomes v. Countrywide Home Loans,*  
6 *Inc.* (2011) 192 Cal.App.4th 1149 for the proposition that concerns about securitization and the  
7 inability to identify the holder of a deed of trust, as a matter of law, do not give rise to a cause of  
8 action challenging the right to foreclose. A demurrer also was sustained without leave to amend  
9 in *Fontenot v. Wells Fargo Bank, N.A.* (2011) 198 Cal.App.4th 256, 272, which centered its  
10 challenge of the lender's right to foreclose on securitization and the lender's use of MERS  
11 (Mortgage Electronic Registration System), which facilitated the transfer of interests in deeds of  
12 trust and prevented a borrower from knowing who owned the loan.

13 No California court has recognized plaintiff's only theory for relief. Securitization does  
14 not invalidate a deed of trust. As all courts that have considered this issue in the recent past  
15 have done, this Court should sustain the demurrer without leave to amend.

16  
17 Dated: November 29, 2011

Respectfully submitted,

THE DREYFUSS FIRM, plc

18  
19 BY: 

BRUCE DANNEMEYER

Attorneys for defendant WELLS FARGO BANK,  
20 N.A.  
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1 PROOF OF SERVICE (By Mail)  
2 (CCP Section 1013a(3))

3 I am over the age of 18, and I am not a party to the within action. I am employed by THE  
4 DREYFUSS FIRM, PLC, in the County of Orange, at 7700 Irvine Center Drive, Suite 710,  
Irvine, CA 92618.

5 On November 29, 2011, I served the attached: **Notice of hearing on demurrer of**  
6 **defendant Wells Fargo Bank to Complaint, Demurrer** on the interested parties in this action  
by placing true copies thereof in sealed envelopes, addressed as follows:

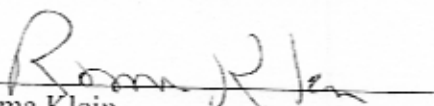
7 **Al West**  
8 **Law Offices of West & Associates**  
9 **700 N. Pacific Coast Highway, Ste. 201**  
10 **Redondo Beach, CA 90277**  
11 **Attorneys for Plaintiffs**

12  **(By Mail)** I placed said envelopes for collection and mailing, following ordinary  
13 business practices, at the business offices of THE DREYFUSS FIRM, PLC at the address set  
14 forth above, for deposit in the United States Postal Service. I am readily familiar with the  
15 practice of THE DREYFUSS FIRM, PLC for collection and processing of correspondence for  
16 mailing with the United States Postal Service, and said envelopes will be deposited with the  
United States Postal Service on said date in the ordinary course of business. I am aware that on  
17 motion of the party served, service is presumed invalid if postal cancellation date or postage  
meter date is more than one day after date of deposit for mailing in affidavit.

18  **(By Facsimile Transmission)** I served the above-described document on the  
19 interested parties in this action by sending a true copy thereof by facsimile transmission  
20 pursuant to California rules of Court, Rule 2009(i)2, from facsimile machine number (949)  
450-0668. The facsimile machine I used complied with California Rules of Court, Rule  
21 2003(3), and no error was reported by the machine. Pursuant to Rule 2009(i)4, I caused the  
machine to print a transmission record of the transmission

22 I declare that I am employed in the office of a member of the Bar of this Court at whose  
23 direction the service was made. I declare, under penalty of perjury under the laws of the State  
of California, that the above is true and correct.

24 Executed on November 29, 2011, at Irvine, California.

25  
26   
27 Roma Klein  
28



2-21

**K&L GATES LLP**  
10100 Santa Monica Boulevard  
Seventh Floor  
Los Angeles, California 90067  
Telephone: 310.552.5000  
Facsimile: 310.552.5001

Robert E. Feyder (SBN 130688)  
Kevin S. Asfour (SBN 228993)  
Attorneys for Defendant Universal American  
Mortgage Company Of California

**FILED**  
LOS ANGELES SUPERIOR COURT

NOV 29 2011  
JOHN A. CLARKE, CLERK  
*Salvatore*  
BY B. FONSECA, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES  
POMONA COURTHOUSE (SOUTH)

CABRERA, MIGUEL A.,

Plaintiff,

vs.

UNIVERSAL AMERICAN MORTGAGE  
COMPANY OF CALIFORNIA, et al.,

Defendants.

Case No. KC 062236 **G**

**DEFENDANT UNIVERSAL AMERICAN  
MORTGAGE COMPANY OF  
CALIFORNIA'S ANSWER BY  
DISCLAIMER TO PLAINTIFF'S  
COMPLAINT**

[Cal. Code Civ. Proc. § 761.030(b)]

Assigned to Hon. Salvatore Sirna

CIT/CASE: KC062236 LEA/DEF#:  
RECEIPT #: POM499441003  
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RECYCLED PAPER

UNIVERSAL AMERICAN MORTGAGE COMPANY OF CALIFORNIA'S ANSWER BY DISCLAIMER

ORIGINAL

1 COMES NOW Defendant Universal American Mortgage Company of California ("UAMC"),  
2 for itself and no others, and answers Plaintiff's Complaint as follows:

3 Without admitting any of Plaintiff's allegations in the Complaint, UAMC hereby states that it  
4 presently holds no interest in the property at issue in the Complaint, and thus, pursuant to Cal. Code  
5 Civ. Proc. § 761.030(b), disclaims any interest in the subject property and agrees to be bound by any  
6 judgment herein regarding right, title or interest in such property, provided that no fees, costs,  
7 expenses, damages or other forms of relief are awarded against UAMC. UAMC reserves the right to  
8 seek leave of Court to amend this Answer upon a relevant change in circumstances or discovery of  
9 new facts.

10  
11 K&L GATES LLP

12  
13 Dated: November 22, 2011

By: 

14 Robert E. Feyder  
15 Keyin S. Asfour  
16 Attorneys for Defendant Universal American  
17 Mortgage Company Of California  
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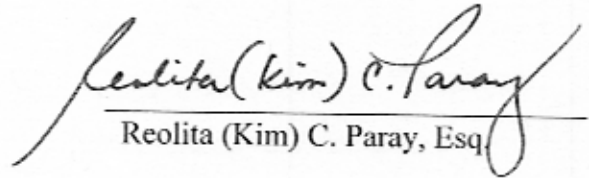
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VERIFICATION

I have read the foregoing DEFENDANT UNIVERSAL AMERICAN MORTGAGE COMPANY OF CALIFORNIA'S ANSWER BY DISCLAIMER TO PLAINTIFF'S COMPLAINT and know its contents. I am a Vice President of Universal American Mortgage Company of California and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground maintain that the matters stated in the foregoing document are true and correct.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: November 22, 2011

  
Reolita (Kim) C. Paray, Esq.

**PROOF OF SERVICE**

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is K&L GATES LLP, 10100 Santa Monica Boulevard, Seventh Floor, Los Angeles, CA 90067. On November 28, 2011, I served the following document(s) by the method indicated below:

**DEFENDANT UNIVERSAL AMERICAN MORTGAGE COMPANY OF CALIFORNIA'S ANSWER BY DISCLAIMER TO PLAINTIFFS' FIFTH AMENDED COMPLAINT**

by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business.

Al West, Esq.  
Law Offices of West & Associates  
700 N. Pacific Coast Hwy. #201  
Redondo Beach, CA 90277

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on November 28, 2011, at Los Angeles, California.

By: Karin Reinhart  
Karin Reinhart

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Allen D. West, Esq. 700 N. Pacific Coast Hwy, Suite 201 Redondo Beach, CA 90277  TELEPHONE NO.: 310-374 4141      FAX NO. (Optional): 310-372 4137 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Plaintiff, Miguel A. Cabrera	FOR COURT USE ONLY  <h1 style="margin: 0;">FILED</h1> <h2 style="margin: 0;">LOS ANGELES SUPERIOR COURT</h2> <p style="font-size: 1.2em; margin: 5px 0;">OCT 31 2011</p> <p style="margin: 0;">JOHN A. CLARKE, CLERK BY B. FONSECA, DEPUTY</p>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES STREET ADDRESS: 400 Civic Center Plaza MAILING ADDRESS: 400 Civic Center Plaza CITY AND ZIP CODE: Pomona, CA 91766 BRANCH NAME: East District - Pomona Courthouse	CASE NUMBER: <h2 style="margin: 0;">KC062236</h2> <div style="font-size: 2em; float: right; margin-left: 10px;">G</div>
PLAINTIFF/PETITIONER: Miguel A. Cabrera DEFENDANT/RESPONDENT: Universal American Mortgage Company, et al	Ref. No. or File No.:
<b>PROOF OF SERVICE OF SUMMONS</b>	

(Separate proof of service is required for each party served.)

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of:
  - a.  summons
  - b.  complaint
  - c.  Alternative Dispute Resolution (ADR) package
  - d.  Civil Case Cover Sheet (served in complex cases only)
  - e.  cross-complaint
  - f.  other (specify documents): Civil Case Cover Sheet Addendum and Statement of Location; Notice of Lis Pendens; Attachment # 1.
3. a. Party served (specify name of party as shown on documents served):  
 Universal American Mortgage Company of California
  - b.  Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b on whom substituted service was made) (specify name and relationship to the party named in item 3a):  
 Maria Sanchez, authorized agent to accept service of process
4. Address where the party was served:  
 818 W. 7th Street, Second Floor, Los Angeles, CA 90017
5. I served the party (check proper box)
  - a.  **by personal service.** I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): 10/25/2011 (2) at (time): 1:52 pm
  - b.  **by substituted service.** On (date): \_\_\_\_\_ at (time): \_\_\_\_\_ I left the documents listed in item 2 with or in the presence of (name and title or relationship to person indicated in item 3):
    - (1)  **(business)** a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
    - (2)  **(home)** a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
    - (3)  **(physical address unknown)** a person at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.
    - (4)  I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc., § 415.20). I mailed the documents on (date): \_\_\_\_\_ from (city): \_\_\_\_\_ or  a declaration of mailing is attached
    - (5)  I attach a declaration of diligence stating actions taken first to attempt personal service.