

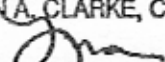
#4

**LAW OFFICES of "WEST & ASSOCIATES"**  
AL WEST Esq Sb # 134456  
700 N PACIFIC COAST HWY #201  
310.374-4141 \* 310.372.2192 Fx

**FILED**  
LOS ANGELES SUPERIOR COURT

JUN 29 2012

ATTORNEY FOR PLAINTIFF(S) :  
(MIGUEL A. CABRERA)

JOHN A. CLARKE, CLERK  
  
BY L. MASCORRO, DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES - EAST BRANCH DISTRICT**

MIGUEL A. CABRERA; )  
 )  
 ) Plaintiff(s), )  
 )  
 vs )  
 )  
 ) UNIVERSAL AMERICAN MORTGAGE )  
 ) COMPANY OF CALIFORNIA; )  
 ) et., al )  
 ) Defendant(s), )  
 )  
 )

CASE # KC 062236  
  
PLAINTIFF'S BRIEF IN SUPPORT  
OF DEFAULT JUDGMENT PURSUANT  
TO PROVE-UP EVIDENTIARY HEARING  
FOR "QUIET TITLE"  
  
DATE : 2 Jul '12  
TIME : 8 :30 AM  
DIV : "G"

TO THE COURT AND HONORABLE JUDGE "SALVATORE SIRNA" :


Comes now the Plaintiff "MIGUEL A. CABRERA" who herein submits instant Brief in advance and in support of Plaintiff's Evidentiary Prove-Up Hearing seeking a Default Judgment for Quiet Title which is currently set for Hearing on July 2, 2012 at 8:30 A.M. or as soon thereafter as the matter may be heard in Department "G" of the above-entitled Court.

Instant Brief will be based upon the grounds that Plaintiff's Complaint and pro-offered authority presents more than sufficient Facts ands Law to support a Judgment of "Quiet Title" in favor of Plaintiff and as against all "Named" Defendants and all "Persons Unknown" who's "Entry of Defaults" have previously been entered. Plaintiff's Brief will be supported by the within Points & Authorities, all Exhibits, pleadings, Authority and papers contained within the Court's file, the Record to Date, and

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any Oral Argument and or documentary evidence and legal authority as may be presented  
at the hearing on this motion.

DATED: JUN 27 2012

By   
**AL WEST**  
*Attorney for Plaintiff*  
**MIGUEL A. CABRERA**

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**MEMORANDUM**  
of  
**POINTS AND AUTHORITIES**

I  
**INTRODUCTION**

Plaintiff can simplify instant Brief in support of their request for a Default Judgment for Quiet Title by acknowledging what Plaintiff unequivocally does not dispute in this simple and single Cause of Action for "Quiet Title."

Plaintiff does not seek to challenge, address, rescind, cancel or undo any remaining or existing "DEBT" if there is any (without confirming the validity or existence of such debt) relative to the "Deed of Trust" document which is at issue, or has been brought into dispute by Plaintiff's instant action. Further Plaintiff does not seek any relief in this action concerning any Debt, Loan(s) and or Promissory Note(s).

Secondly; Plaintiff is not herein moving to vacate or set aside a "TRUSTEE'S SALE" of foreclosure, as this has not taken place nor had any Foreclosure proceedings commenced as against Plaintiff as of the time of the filing of instant action.

Thirdly; The "TENDER RULE", does not apply, as there exists no California Authority requiring any "Tender", or offer thereof, in the absence of any challenge to the relative "Debt", "Foreclosure Proceedings" and or "Trustee's Sale". Tender in California has only been required in these given fact scenarios, not the alleged fact pattern presented in Plaintiff's sole Cause of Action, or claim for "Quiet title".

Lastly, although subject Debt, Loan and or Promissory Note, may or may not have been "Securitized", whether or not they have, is not the basis upon which Plaintiff seeks to Quiet Title. The mere "SECURITIZATION" in and of itself, of subject Debt, Loan(s) or Promissory Note(s), is not what Plaintiff or Plaintiff's Cause of Action relies upon as Factual or Legal support for Plaintiff's claim for Quiet Title.

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II  
**BRIEF STATEMENT OF FACTS/CASE**

Plaintiff purchased and or took title to subject Property on 09/21/04 by way of a "Grant Deed". Without confirming the validity or existence thereof, as to any relative debt, throughout instant Brief, it is alleged that Plaintiff on or about 10/19/04 executed a Debt Instrument, Loan Document and or Promissory Note, as well as a document entitled "Deed of Trust" relative to the Property Plaintiff took tile to. This was executed for and in the name of "UNIVERSAL AMERICAN MORTGAGE COMPANY OF CALIFORNIA" (Plaintiff's First Named Defendant) (see exhibit "1" Deed of Trust) as the holder of said Deed of Trust. Subsequent to the execution of this "Deed of Trust" this entity SOLD, ASSIGNED and or TRANSFERRED the relative Debt, Loan and or Promissory Note to another entity or individual (see exhibit "2" Securitization Audit specifically Pg "7"). Subsequent to this initial selling, assigning and or transferring of the relative Debt, Loan and or Promissory Note, there were numerous other sales, assignments and or transfers of this same and identical relative Debt, Loan and or Promissory Note as indicated within this same exhibit "#2" and at this same page as referenced. However there was never any concurrent assignment, or assignments, of subject Deed of Trust on behalf of the initial Assignor "UNIVERSAL AMERICAN MORTGAGE COMPANY OF CALIFORNIA" relative to either the initial or subsequent Selling, Assigning or Transferring of the Debt, Loan or Promissory Note as required by California Law as referenced below. Subject Deed of Trust in the name of the Assignor entity "AMERICN MORTGAGE COMPANY OF CALIFORNIA" remained on Title, having never been Reconveyed or Assigned whatsoever, thereby subsequently resulting in having no force and effect specifically as to "UNIVERSAL AMERICAN MORTGAGE COMPANY OF CALIFORNIA " (Plaintiff's First Named Defendant)" which left remaining a resulting "Invalid", "Null" and "Void" Deed of Trust as to this Assignor entity "UNIVERSAL AMERICAN MORTGAGE COMPANY OF CALIFORNIA".

Plaintiff reviewing the "Title Report" realized these facts and therein filed Instant suit for "Quiet Title".

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1 "UNIVERSAL AMERICAN MORTGAGE COMPANY OF CALIFORNIA" as a Party Defendant  
2 once properly served, responded to instant Action by way of a "Disclaimer" pursuant to  
3 Cal. Civil Code of Procedure 761.030(b)

4 Plaintiff knowing of only one other entity on Title (Wells Fargo Bank , N.A.) has  
5 declined to name this other entity as a Defendant, and does not wish to Quiet Title as to  
6 this entity.

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8 **III**  
**ARGUMENT IN SUPPORT OF "QUIET TITLE"**

9  
10 Plaintiff would first begin by explaining that Plaintiff's claim and sole Cause of  
11 Action for "Quiet Title" is based or supported as alleged and plead on two distinct and  
12 specific theories of California Law. The First: is relative to the issue and or claim that there  
13 was a Severance, Bifurcation or Separation that had occurred and was effectuated as to  
14 the Debt, Loan or Promissory Note from subject Deed of Trust by, for, and on behalf of  
15 "UNIVERSAL AMERICAN MORTGAGE COMPANY OF CALIFORNIA" (Plaintiff's First  
16 Named Defendant). This was a result of the Selling, Assigning and or Transferring of the  
17 Debt, Loan and or Promissory Note without a corresponding Assignment of the relative  
18 Deed of Trust. The Second: In the alternative, is that the "Terms" and or "Provisions" of  
19 the Deed of Trust had been fully satisfied. Each and every Deed of Trust, including subject  
20 Deed of Trust, contains and possesses the provision and or clause that states "upon  
21 payment of all sums secured by this Security Instrument", then subject Deed of Trust shall  
22 no longer remain in full force and effect, and or a "Reconveyance" shall be performed by  
23 the holder of said Deed of Trust. This paying in full of "all sums" has specifically taken  
24 place at the time of the Selling, Assigning or Transferring of the Debt relative to the holder  
25 of subject Deed of Trust which is clearly "UNIVERSAL AMERICAN MORTGAGE COMPANY  
26 OF CALIFORNIA" (Plaintiff's First Named Defendant).

27  
28 **1) SEVERANCE AND OR BIFURCATION ALLEGATION :**

1                   "California Civil Code Sec "2936" specifically declares that "The assignment of a  
2     DEBT secured by a mortgage carries with it the security" Additionally in the one hundred  
3     year old well established US Supreme Court case of "Carpenter vs Logan" @ 83 U.S. 271  
4     (1872) it was held that "a Note and Mortgage are inseparable; the former as essential, the  
5     latter as an incident. An assignment of the Note carries the Mortgage with it". In "Lewis vs  
6     Booth" 3 Cal 2<sup>nd</sup> 347 (1935) it was held "A lien is but an incident of the debt secured, and  
7     cannot be transferred apart therefrom." "Domarad vs Fisher & Burke, Inc." 270 Cal App 2<sup>nd</sup>  
8     547 (1969) "A Deed of Trust" has no assignable quality independent of the debt, it  
9     may not be assigned or transferred apart from the debt, and an attempt to assign the Deed  
10    of Trust without a transfer of the debt, is without effect. "Cockerell vs Title Ins. & Trust  
11    Co." 42 Cal 2<sup>nd</sup> 284, 291; "Union Supply Co vs Morris" 220 Cal 331, 338-339; "Savings &  
12    Loan Soc. Vs McKoon" 120 Cal 179; "Hyde vs Mangan" 88 Cal 319, 327; that a Deed of  
13    Trust is inseparable from the debt and always abides with the debt, and it has no market or  
14    ascertainable value, apart from the obligation it secures, "Buck vs Superior Court" 232 Cal  
15    App 2<sup>nd</sup> 153,158; "Nagle vs Macy" 9 Cal 426, 428; "Polhemus vs Trainer" 30 Cal 685, 688;  
16    "Adler vs Sargent" 1098 Cal 42, 48; "Johnson vs Razy" 181 Cal 342, 344; "Kelly vs  
17    Upshaw" 39 Cal 2<sup>nd</sup> 179, 191-192.

18                   In effect when the Debt, Loan and or Promissory Note was Sold, Assigned and  
19    or Transferred by "UNIVERSAL AMERICAN MORTGAGE COMPANY OF CALIFORNIA"  
20    (Plaintiff's First Named Defendant) as alleged and specifically stated in the relative  
21    paragraph entitled "Assigned; Transferred, Sold, any and all Debt; Loan; Promissory  
22    Note" of subject Complaint, then pursuant to California Law, any and all security and or  
23    secured interest was by Operation of Law accordingly assigned and transferred along with  
24    the Debt, Loan and or Promissory Note. As such any and all interests possessed by the  
25    Assignor as in this case "UNIVERSAL AMERICAN MORTGAGE COMPANY OF  
26    CALIFORNIA" (Plaintiff's First Named Defendant) then became "Invalid", "Null" and  
27    "Void". More specifically as the above authority holds subject Deed of Trust "had no  
28    market or ascertainable value" nor "does it have any assignable quality". Furthermore the

1 remaining "Deed of Trust", or any attempt to assign subject "Deed of Trust", is without  
2 any effect as this Deed of Trust has or had legally become "Invalid, "Null" and "Void", as  
3 to this specific entity or individual.

4 To Reiterate, once the Debt, Loan and or Promissory Note was sold, assigned and  
5 or transferred, or any time thereafter by "UNIVERSAL AMERICAN MORTGAGE COMPANY  
6 OF CALIFORNIA" (Plaintiff's First Named Defendant) they, at that very moment lost any  
7 and all interests that might have initially existed from and arose out of subject Deed of  
8 Trust, as well as to any and all interests in Plaintiff's Property.

9 Plaintiff does assert, in essence, that subject Deed of Trust held at one time by  
10 "UNIVERSAL AMERICAN MORTGAGE COMPANY OF CALIFORNIA" (Plaintiff's First  
11 Named Defendant) the Assignor entity to the relative Debt, Loan and or Promissory Note,  
12 was no longer a valid lien as against Plaintiff's Property once the relative Debt, Loan and  
13 or Promissory Note had been Sold, Assigned and or Transferred without a corresponding  
14 Assignment of subject Deed of Trust.

## 15 **2) SATISFACTION OF THE TERMS AND PROVISIONS OF THE DEED OF TRUST :**

16 As is specifically stated and or enumerated within subject Deed of Trust  
17 (paragraph 23), one of the Terms and Provisions contained therein is that subject Deed of  
18 Trust shall be "Reconveyed" and or "This Deed of Trust" is in full force and effect until "all  
19 sums have been paid in full". By the mere fact that that the Debt, Loan and or Promissory  
20 Note had in fact been "Sold" for full value plus, then this provision or mandate would  
21 rendered subject Deed of Trust as having been fully satisfied, and would no longer be a  
22 valid lien as against Plaintiff's Property.

## 23 **IV**

### 24 **PRO-OFFERED AUTHORITY**

25 As additional insight and as "Amicus Curiae" Legal authority, Plaintiff herein  
26 respectfully submits, concurrently herewith as exhibit "3" to instant Brief, a copy of  
27 California Legislature SB-1471 (which was just recently passed), and although will not go  
28

1 into effect in some parts until 2013 and 2017 in other parts, it clearly provides confirmation  
2 of the specific grounds and merits as to the theory, facts and law of which Plaintiff relies  
3 upon, In seeking a Quiet Title Judgment. Careful reading of this Senate Bill painstakingly  
4 brings to the forefront the facts and circumstances surrounding the lack of thoroughness  
5 in the way Deeds of Trusts and or Promissory Notes were handled, processed, recorded  
6 and or "Assigned", or the lack thereof, during this past troubled and chaotic climate and  
7 era of the questionable "Securitization campaign or process. Our California Legislature  
8 has addressed these very issues and has recognized, acknowledged and confirmed the  
9 improper and inappropriateness on the part of these Financial Institutions, and Banks in  
10 their failure to properly maintain and "Assign" said documents, the very gist of which is  
11 present in our case at hand, and relates to the very Title and Financial documents  
12 referenced in this Action. Although not yet in effect it provides some guidelines and  
13 references parallel to some of the same and identical arguments and claims Plaintiff  
14 presents in this Action

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16 **V**  
**CONCLUSION**

17 Plaintiff's Cause of Action sounding in "Quiet Title" by and through the supporting  
18 authority can be clearly established, and is completely supported collectively by all of the  
19 alleged facts and legal authority presented within Plaintiff's Complaint, documents and  
20 evidence presented, as well as the testimony of the witnesses which will be fully provided  
21 to the Court in order to establish a claim for Quiet Title on the two (2), grounds or basis  
22 presented. Authority presented within instant Memorandum of Points and Authorities  
23 unequivocally sets forth the Legal basis for Plaintiff's sole Cause of Action sounding in  
24 "Quiet Title". The Severance and or Bifurcation of the Debt, Loan and or Promissory Note  
25 from subject Deed of Trust without a corresponding assignment of the Deed of Trust itself,  
26 which by California Law, are inseparable, renders the stale or remaining un-assigned Deed  
27 of Trust virtually Abandoned. The interests which were initially established by way of  
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subject Deed of Trust became "Invalid", Null" and "Void".

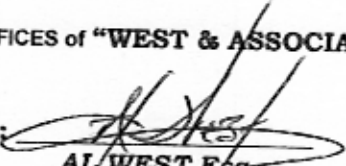
By Contrast, as established by the Authorities presented herein, and out of the Laws of the State of California, subject Deed of Trust, in the name of "UNIVERSAL AMERICAN MORTGAGE COMPANY OF CALIFORNIA" (Plaintiff's First Named Defendant) became "Invalid", "Null", and "Void" once the relative Debt, Loan and or Promissory Note had been Sold, Assigned and or Transferred.

WHEREFORE; Plaintiff respectfully requests this Court uphold California Law in its entirety and apply such authority to the specific facts which have been established herein, and render a Judgment for "Quiet Title" in favor of Plaintiff as against all "Named" Defendants and "all Persons Unknown" now before the Court.

Dated : JUN 27 2017

"Respectfully Submitted"

LAW OFFICES of "WEST & ASSOCIATES"

By :   
AL WEST Esq  
Attorney for Plaintiff  
MIGUEL A. CABRERA

10/29/04

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Recording Requested By:  
**Veronica Espinoza**

Return To:  
Universal American Mortgage Company, LLC  
Secondary Marketing Ops  
700 NW 107th Avenue 3rd Floor  
Miami, FL 33172-3139

Prepared By:  
**Veronica Espinoza**  
Universal American Mortgage Company of  
California  
391 N. Main Street  
Corona, CALIFORNIA 92880

Loan # 0005683982

[Space Above This Line For Recording Data]

A9926

# DEED OF TRUST

MIN 100059600056839827

## DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated **October 19, 2004** together with all Riders to this document.

(B) "Borrower" is **MIGUEL A. CABRERA, A SINGLE MAN**

Borrower's address is **9352 DANBY AVE, SANTA FE SPRINGS, CALIFORNIA 90670**

Borrower is the trustor under this Security Instrument.

(C) "Lender" is **Universal American Mortgage Company of California**

Lender is a **California Corporation** organized and existing under the laws of **California**

CALIFORNIA-Single Family Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS

Form 3005 1/01

UAP -6A(CA) (0207)

Page 1 of 15

Initials: 

VMP MORTGAGE FORMS - (800)521-7251

04 2801028