

June 1, 2026

Attention Court Executive Officer (Claims)  
Superior Court of California, County of San Diego  
1100 Union Street  
San Diego, Ca 92101

Investigations  
California State Auditor  
P.O. Box 1019  
Sacramento, Ca 95812

Commission on Judicial Performance  
455 Golden Gate Avenue, Suite 14400  
San Francisco, Ca 94102-3660

**GOVERNMENT CODE COMPLAINT AGAINST THE COMMISSION ON  
JUDICIAL PERFORMANCE AND CYNTHIA A. FREELAND**

The Commission on Judicial Performance might as well allow Citizens off the Street to be Judges. Why not? They allowed Cynthia A. Freeland to pick Defendants without them being named; summons; or served. Any kindergartener could do that blindfolded.

The only Performance the Commission condones is Judges that have sex with clerks in chambers (exhibit 5); convicted federal felons (exhibit 4); and Judges like Cynthia A. Freeland who changes Defendants like changing shoes (exhibit 19).

This complaint is against the California Commission on Judicial Performance and Judge Cynthia A. Freeland.

Judge Freeland on a regular basis change Defendants to fix cases thereby proceeding to issue judgments without Personal and Subject Matter Jurisdiction.

The Commission has over the pass 17 or more years condoned this. See exhibit 21.

The Bennetts request two simple remedies. The first is to pay damages for the actions of the above or in the alternative fix the problem.

Fixing the problem would mean restoring the Defendants as is appropriate by setting trial in the Bennett vs Bank of America case and dismissing the Cielo vs Bennet (one "t") for lack of Personal Jurisdiction.

Damages in the Bennett vs Bank of America is their admitted \$500/day from October 2013 plus approximately 3.5 Million in equity lost.

Damages in the Cielo vs Bennet (one "t") case is determined by caselaw to be \$300,000 plus punitive (three times).

James Bennett and Pamela Bennett  
30123 Rancho California Road # 617  
Temecula, Ca. 92592  
Ph: 442-237-2287  
Email: 359116james@gmail.com

**ATTENTION: Instruct Claimant to send completed form to court's Executive Officer.**

**GOVERNMENT CLAIM—JUDICIAL BRANCH**

(Government Code section 910.4)

Postmark date if received by mail: \_\_\_\_\_

**CLAIMANT**

Name of Claimant	Home Telephone	Work Telephone
Pamela Bennett and James Bennett	442-237-2287	N/A

Mailing Address	City	State	Zip Code
30123 Ranch California Road # 617	Temecula	CA	92592

Send notices regarding this claim to (if different from above):

Name

Mailing Address	City	State	Zip Code
Same			

**CLAIM INFORMATION**

Date of Incident (Month/Day/Year)	Time of Incident
May 15, 2026 & March 23, 2026	8:30-5:00

Location of Incident  
325 South Melrose Drive, Vista, California 92081

Describe the indebtedness, obligation, injury, damage, or loss incurred as a result of the incident.  
See Statement of Facts attached hereto.

State the circumstances that gave rise to this claim. (State the facts that support your claim and why you believe the court or another judicial branch entity is responsible for the alleged damage or injury.) If known, provide the name of the official or employee who allegedly caused the injury, damage, or loss (if there is more than one official or employee, name each). If you need more space, please attach additional sheets of paper. See Statement of Facts attached hereto.

**GOVERNMENT CLAIM—JUDICIAL BRANCH**

Name of Claimant: \_\_\_\_\_

If the total amount of your claim is up to \$10,000:

Amount of damages as of this date: \_\_\_\_\_

Estimated amount of future damages: \_\_\_\_\_

Total amount claimed: \_\_\_\_\_

If the amount of your claim is more than \$10,000, indicate whether your claim would be a limited civil case or an unlimited civil case (*check one*):

Limited civil (amount is \$25,000 or less)

Unlimited civil (amount is more than \$25,000)

State how the amount of your claim was computed (include copies of supporting documentation such as billing statements, invoices, receipts, and estimates).

See Attached Statement of Facts attached hereto.

List the names, addresses, and telephone numbers of all witnesses to the incident.

Michael Garland, Jacqueline Stern, and Cynthia Freeland and the Court Reporters Appearing in the Record and San Diego County Sheriffs Detective Sergeant Matthew Mays; United States Comptroller of the Currency; Bank of America; and others listed on attached Statement of Facts.

Provide any additional information that might be helpful in considering this claim.

See Attached Statement of Facts attached hereto.

**REPRESENTATIVE (Complete only if claim is presented by someone acting on claimant's behalf)**

Name of Authorized Representative

Telephone

Same

Mailing Address

City

State

Zip Code

Same

**PLEASE NOTE: Presentation of a false claim with intent to defraud is a criminal offense (Penal Code section 72).**

Signature of  Claimant or  Authorized Representative (*check one*)

May 30, 2026

Date

**Deliver or mail this claim form to:**

Attention: Court Executive Officer (Claims)  
Superior Court of California, County of San Diego  
1100 Union St.  
San Diego, CA 92101

or  
Attention: Court Executive Officer (Claims)  
Superior Court of California, County of San Diego  
P.O. Box 122724  
San Diego, CA 92112-2724

**GOVERNMENT CLAIM—JUDICIAL BRANCH**

**WHISTLEBLOWER COMPLAINT REPORT**

ADM-105 (REV 05/13)

Page 1 of 3

**INSTRUCTIONS:** The California State Auditor (state auditor) accepts complaints about improper governmental activities by state agencies and employees. An *improper governmental activity* is defined as any action by a state agency or any action by a state employee directly related to state government that violates the law, violates an Executive Order of the Governor, violates a Rule of Court, violates the *State Administrative Manual* or *State Contracting Manual*, is economically wasteful, or involves gross misconduct, incompetency or inefficiency.

The state auditor does not have authority to investigate the legislative branch of state government or their employees, federal or local government agencies or their employees, or private entities like businesses and nonprofit organizations or their employees.

The state auditor does not automatically investigate every complaint received. Each complaint is evaluated carefully to determine whether it has enough potential merit to warrant the expenditure of state resources to conduct an investigation.

As a decision about whether to initiate an investigation must be based on what appears in the complaint, the complaint must show there is sufficient evidence available for an investigator to confirm that what is being alleged is true. The complaint therefore must identify specific witnesses, documents, and other sources of information that an investigator may examine to find support for an allegation.

The state auditor accepts complaints that are submitted anonymously. However, if the complainant is unavailable to answer questions or confirm the alleged facts, this may prevent staff from being able to justify or direct an investigation.

When making an allegation, it is important to provide as much of the following information as possible for each allegation being made.

**Who?** Who are the state employees (subjects) responsible for the improper activity? Who is each employee's supervisor? If non-state employees also are involved, who are they? If any businesses are involved, which businesses and who owns them? Who else knows anything about this?

**What?** What is the improper activity? Why is it improper? What laws or policies make the activity improper? What documents are there that will verify the improper activity occurred? Can you provide copies of the documents?

**Where?** Where did the activity occur (the department and location, including address)? Where can an investigator locate the persons who were involved or have information about the activity? Where can an investigator find documents or other evidence related to the activity?

**When?** When did the activity occur? When did you discover the activity?

**Why?** Why did the activity occur? Did it provide some benefit to those involved?

**How?** How was the activity able to occur? Were there no controls in place to prevent the activity? If there were controls in place, how were they circumvented?

Please enclose the completed form in an envelope marked "Confidential" and mail it to:

Investigations  
California State Auditor  
P.O. Box 1019  
Sacramento, CA 95812

**By law, the state auditor cannot reveal the name of a complainant without his or her permission, except to appropriate law enforcement personnel who are conducting a criminal investigation.**

### COMPLAINANT(S) INFORMATION

NAME <b>James Bennett</b>		POSITION <b>N/A</b>	BEST TIME TO CALL <b>8-5pm</b>
EMPLOYER/DEPARTMENT <b>N/A</b>		EMPLOYER/DEPARTMENT ADDRESS <b>N/A</b>	WORK PHONE <b>N/A</b>
HOME ADDRESS <b>30123 Rancho California Road# 617, Temecula, Ca 92592</b>			HOME/CELL PHONE <b>442-237-2287</b>
NAME		POSITION	BEST TIME TO CALL
EMPLOYER/DEPARTMENT		EMPLOYER/DEPARTMENT ADDRESS	WORK PHONE
HOME ADDRESS			HOME/CELL PHONE
NAME		POSITION	BEST TIME TO CALL
EMPLOYER/DEPARTMENT		EMPLOYER/DEPARTMENT ADDRESS	WORK PHONE
HOME ADDRESS			HOME/CELL PHONE

### SUBJECT(S) INFORMATION

NAME <b>Cynthia A. Freeland</b>		POSITION <b>Superior Court Judge</b>
DEPARTMENT <b>N-27</b>	DIVISION <b>Same</b>	DEPARTMENT ADDRESS <b>326 S. Melrose Drive, Vista, Ca 92081</b>
HOME ADDRESS <b>Unknown</b>		WORK PHONE <b>(760) 201-8027</b>
NAME		POSITION
DEPARTMENT	DIVISION	DEPARTMENT ADDRESS
HOME ADDRESS		WORK PHONE
NAME		POSITION
DEPARTMENT	DIVISION	DEPARTMENT ADDRESS
HOME ADDRESS		WORK PHONE

### WITNESS(ES) Please provide witnesses who can confirm your allegations

NAME <b>See Attached Statement of Facts</b>	TITLE	WORK PHONE
DEPARTMENT	ALLEGATION NUMBER(S)	HOME/CELL PHONE
NAME	TITLE	WORK PHONE
DEPARTMENT	ALLEGATION NUMBER(S)	HOME/CELL PHONE
NAME	TITLE	WORK PHONE
DEPARTMENT	ALLEGATION NUMBER(S)	HOME/CELL PHONE

**WITNESS(ES) CONT.**

Briefly describe the information the witness(es) will be able to confirm. Use additional paper if necessary.

See Attached Statement of Facts

**COMPLAINT**

Briefly describe the improper activity(ies) and how you know about them. *Specify who, what, when, where and how.* Number the allegations. Use additional paper if necessary.

See Attached Statement of Facts

**EVIDENCE**

Please list all documents or other items of evidence that prove the allegations to be true and explain how each item provides proof. Use additional paper if necessary. If you have any of the listed documents in your possession, please provide copies.

Included in attached Statement of Facts.

**SIGNATURE ( Read the following before signing below)**

Your complaint will be processed under the California Whistleblower Protection Act (California Government Code Section 8547, et seq.). This law empowers the State Auditor to investigate complaints of improper governmental activities but not to act as an advocate for individuals in their disputes with state departments or employees. By law, we must conduct our investigations confidentially, and therefore cannot keep you informed about our review of your complaint or the progress of any investigation that may follow. However, approximately twice per year we publish a report about our investigations that have substantiated improper activities. These reports are available on our Web site [www.auditor.ca.gov](http://www.auditor.ca.gov), or by calling (916) 445-0255. If you have any general questions regarding the complaint handling process, call (800) 952-5665.

SIGNATURE	DATE
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# GOVERNMENT CODE COMPLAINT AGAINST THE COMMISSION ON JUDICIAL PERFORMANCE AND CYNTHIA A. FREELAND

## STATEMENT OF FACTS

**A. The Commission on Judicial Performance might as well allow Citizens off the Street to be Judges. Why not? They allowed Cynthia A. Freeland to pick Defendants without them being named; summons; or served. Any kindergartener could do that blindfolded.**

1. We know that exhibit 1 proves that “Sewer Service” simply means Personal Jurisdiction falsified by the Court to support the issuance of Illegal Default Judgments and “Junk Justice”.

2. We know that exhibit 2 proves “Junk Justice” is a form of Justices that is specifically designed to rob Blacks and other Minorities of their rights guaranteed through the California and United States Constitutions.

3. We also know through exhibit 3 that the Rancho Santa Fe Community in the San Diego Court Jurisdiction is a racist place unless you are of Caucasian Persuasion.

4. We know that exhibit 4 proves the Department of Justice has determined that the San Diego Judicial system which covers Rancho Santa Fe has been so infected with Due Process Violations perpetrated against Blacks and other Minorities that it required a Hotline straight through to the Federal Bureau of Investigations to stem the tide of this ugly Systemic Habit.

5. We also know exhibit 5 proves that the entire California Judicial Complaint System is filled with a Commission of those who go so far as to condone California Judges forcing female lower-level Clerks and Law Clerks to have sex with them in chambers.

6. It is through this lens that we make the following allegations against Superior Court Judge Cynthia A. Freeland for her proven execution of “Sewer Sever” and “Junk Justice” she inflicted on the Bennetts using California’s Judicial privilege to be a Superior Court Judge.

**B. Proven allegations of “Sewer Service” and “Junk Justice” used by Cynthia A. Freeland in Cielo vs Bennet (one “t”).**

1. Exhibit 6-Foreclosure Complaint proves a Foreclosure Complaint was filed against a Pamela Bennet (one “t”).

2. Exhibit 7-Summon proves a Summons was issued by Cynthia A. Freeland and others in the Rancho Santa Fe Jurisdiction Superior Court summoning a Pamela Bennet (one “t”) to answer the Foreclosure Complaint in exhibit 6.

3. Exhibit 8- is the Proof of Service associated with exhibits 6 and 7 Foreclosure Complaint and its’ accompanying Summons proves they were served on Pamela Bennet (one “t”).

4. Exhibit 9-Certificate of Service is a sworn Certification that the above is true and correct.

5. Exhibit 10- is the Trustees Deed proves that on July 31, 2012 title to the above Foreclosure Property and its' associated lien were eliminated by a Bank of America foreclosure.

6. Despite the above, exhibit 11 proves Judge Jacqueline Stern and her Clerk Micheal Garland issued and filed a Foreclosure Judgment against Pamela Bennett (two "t"s) who was neither named nor served.

7. Despite the above, exhibit 12 proves Judge Cynthia A. Freeland also issued a Foreclosure Judgment against a Pamela Bennett (two "t"s) who was neither named or served.

8. In relations to the silliness above, exhibit 13 proves a Unanimous Appellate Panel held;

This is not a typo. The complaint identified the defendant as Pamela **Bennet**.  
and

Apparently, realizing [James Judge]<sup>1</sup> had spelled **Bennett's** name *incorrectly* in the complaint, [James Judge] filed a form amendment to the complaint on September 27, 2010. However, although it identified **Bennett** as the correct spelling of the defendant's last name, *the form amendment did not amend the complaint to add **Bennett** as the correct defendant, but instead, listed "Pamela **Bennet**" as the proper defendant yet again.*

See page 3, footnote 4, and page 3, last paragraph through page 4, first paragraph.

**C. Proven allegations of "Sewer Service" and "Junk Justice" used by Cynthia A. Freeland in Bennett (two "t"s) vs Bank of America. Freeland**

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<sup>1</sup> Name inserted here for clarity of the violating party.

**changed the Defendant from Bank of America to Deutsche Bank.**

1. Exhibit 14 proves the Bennetts reversed a Bank of America Eviction and Foreclosure Action. It clearly shows the Eviction and Foreclosure party as Bank of America.

2. Exhibit 15, page 4, line 4 proves Bank of America admitted per day value of possession of the Bennetts' home at the time was \$500.00.

3. Exhibits 16 and 17 prove the United States Comptroller of the Currency found Bank of America Illegally foreclosed the Bennett Mortgage and took ownership and possession of their home.

4. Exhibit 18 contains two versions of the same Docket less than two hours apart. They prove Jacqueline Stern and her Clerk changed the Defendant from Bank of America to Deutsche on October 25, 2016. This occurred less than three months before the Bennetts' scheduled January 2017 trial on Damages associated with the illegal Foreclosure and Eviction above.

5. Exhibit 19 proves, the Bennetts reported this to the San Diego County Sheriffs, and they sent Mr. Bennett an Email investigation summary proving Judge Stern and her Clerk Michael Garland testified that a New Defense Attorney was allowed to access the Superior Court's web site and change the Defendants.

6. That Attorney was Jered Ede who Bennett had reported to the California Bar several times.

**D. We know the above violates Personal and Subject matter Jurisdiction because Cal. C. Civ. P. § 410.10 limits Judge Cynthia Freeland’s Jurisdiction to pursue “Sewer Service” and “Junk Justice”. This is true because the Supreme Court ruled “one not named in a complaint” makes the judgment therein Void ab initio.**

1. The California Supreme Court and its’ Lower Appellate courts held:

One not made a *party defendant* in the action stands in no different position than a person who is not served with process. It is equally well settled that a judgment may not be entered in favor of or against a person who is not made a party to the action

See *Nissan v. Barton*, 4 Cal. App. 3d 76, 81 (1970) and *Fazzi v. Peters*, 68 Cal. 2d 590 (C.S.ct. 1968).

2. The United States Supreme Court under its’ Supremacy Clause held:

The requirement that a court have *personal jurisdiction* flows not from Art. III, but from the *Due Process Clause*.

See *Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 US 694, 702 (1982).

3. California’s Legislature passed Cal. C. Civ. P. § 410.10 limiting Subject Matter Jurisdiction to all California Courts unless they exercise Jurisdiction within the boundaries of the United States and California Constitutions.

4. Superior Court Judge Cynthia A. Freeland does not operate consistent with Section 410.10.

**E. The Bennetts’ final note in regards to Judge Cynthia A. Freeland’s refusal to remove herself under Cal. C. Civ. P. § 170.6 after being served with a Peremptory Challenge.**

1. Exhibit 20, page 9 lines 22-28 proves Judge Freeland denied her own Section 170.6 Peremptory Challenge.

**F. The Bennetts quest monetary damages or Due Process.**

1. Exhibit 15, page 4, line 4, proves per day value which would have been put before the January 2017 trial which was stopped because of the change in Defendants from Bank of America to Deutsche Bank was \$500.

2. The current value of the Bennetts' home which would have also been put before the January 2017 trial is now over \$6,000,000.

3. As compensation, the Bennetts request the State of California provide the amounts established or to roll back the clock, reset the 2017 Jury trial on damages and remove Judge Freeland from the cases and investigate whether she is suitable for judgeship in the State of California.

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- 19.....Bennetts reported Defendant Change to the San Diego County Sheriffs
- 20.....Judge Freeland denied her own Section 170.6 Peremptory Challenge
- 21.....Prior Commission Failures

# **EXHIBIT 1**

("Sewer Service" simply means Personal Jurisdiction falsified)

# Sewer service

**Sewer service** is an epithet for the intentional failure to provide service of process on a named party in a lawsuit, in order to prevent the party from having a chance to respond. This practice usually involves filing a false affidavit claiming that the defendant had been properly served court papers; then, when the defendant fails to appear, the plaintiff then applies for and wins a default judgment due to the defendant's non-appearance.<sup>[1]</sup> The phrase refers to the figure of speech of throwing the documents into a sewer, and is considered a fraud upon the court.<sup>[2]</sup>

It was referenced in a 2019 United States Supreme Court opinion, *Rotkiske v. Klemm*, which featured an allegation of a debt collector winning a default judgment against a debtor through sewer service.<sup>[3]</sup>

## Further reading

- Tuerkheimer, Frank M. (1972). "Service of process in New York City: A proposed end to unregulated criminality" (<http://heinonline.org/HOL/LandingPage?collection=journals&handle=hein.journals/clr72&div=60&id=&page=>). *Colum. L. Rev.* **72** (5): 847–872. doi:10.2307/1121426 (<https://doi.org/10.2307%2F1121426>). JSTOR 1121426 (<https://www.jstor.org/stable/1121426>).
- Press Release: "The New York State Attorney General Andrew M. Cuomo Announces Guilty Plea Of Process Server Company Owner Who Denied Thousands Of New Yorkers Their Day In Court" (<https://ag.ny.gov/press-release/2010/new-york-state-attorney-general-andrew-m-cuomo-announces-guilty-plea-process>). January 15, 2010. Retrieved 2019-10-06. "*process servers and law firms that have made a mockery of our justice system by engaging in 'sewer service.'*"
- Shaun Ertischek, Esq. *Debt Collection Through Sewer Service* (<http://www.lupoloverlaw.com/home/blog/146-debt-collection-through-sewer-service>) Archived (<https://web.archive.org/web/20150202085839/http://www.lupoloverlaw.com/home/blog/146-debt-collection-through-sewer-service>) 2015-02-02 at the *Wayback Machine*, 31 July 2010. (Archived here (<https://web.archive.org/web/20120324203653/http://lupoloverlaw.com/blog/2010/01/debt-collection-through-sewer-service/>) by WebCite)

## References

1. Rivera, Ray (2009-12-30). "Suit Claims Fraud by New York Debt Collectors" (<https://www.nytimes.com/2009/12/31/nyregion/31debt.html>). *The New York Times*. Retrieved 2019-12-23.
2. Olson, Walter (2010-01-05). "'Sewer service' alleged against New York debt collectors" (<https://www.overlawyered.com/2010/01/sewer-service-alleged-against-new-york-debt-collectors>). *Overlawyered.com*. Retrieved 2019-12-23.
3. Strawbridge, Kimberly; Rubin, Jordan; Saltz, Heather (2019-12-10). "Justices Rule for Creditor in 'Sewer Service' Debt Dispute" (<https://news.bloomberglaw.com/us-law-week/justices-set-early-clock-for-debt-collection-cases>). Retrieved 2019-12-10.

Retrieved from "[https://en.wikipedia.org/w/index.php?title=Sewer\\_service&oldid=1336497424](https://en.wikipedia.org/w/index.php?title=Sewer_service&oldid=1336497424)"

# EXHIBIT 2

(Article “Junk Justice” is a form of Justices)

University of Maryland Francis King Carey School of Law

DigitalCommons@UM Carey Law

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Faculty Scholarship

Francis King Carey School of Law Faculty

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2014

## Junk Justice: a Statistical Analysis of 4,400 Lawsuits Filed by Debt Buyers

Peter A. Holland

*University of Maryland Francis King Carey School of Law*, [peter@hollandlawfirm.com](mailto:peter@hollandlawfirm.com)

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# JUNK JUSTICE: A STATISTICAL ANALYSIS OF 4,400 LAWSUITS FILED BY DEBT BUYERS

*Peter A. Holland\**

*Abstract:* Debt buyers have flooded courts nationwide with collection lawsuits against consumers. This article reports the findings from the broadest in-depth study of debt buyer litigation outcomes yet undertaken. The study demonstrates that in debt buyer cases, (1) the vast majority of consumers lose the vast majority of cases by default the vast majority of the time; (2) consumers had no lawyer in ninety-eight percent of the cases; and (3) those who filed a notice that they intended to defend themselves without an attorney fared poorly, both in court and in out of court settlements.

This study challenges the notion that there is an “adversary system” within the context of debt buyer lawsuits. The findings suggest that no such adversary system exists for most defendants in consumer debt cases. Instead, these cases exist in a “shadow system” with little judicial oversight, which results in mass produced default judgments.

The procedural and substantive due process problems which are endemic in debt buyer cases call for heightened awareness and remedial action by the bench, the bar, and the academy. As lawyers who are “public citizens, with a special responsibility

---

\* Director and Clinical Instructor, University of Maryland Francis King Carey School of Law’s Consumer Protection Clinic. I am indebted to Max Brauer for his assistance in developing this study’s protocol, and to Emanwel Turnbull for his tremendous assistance in analyzing and presenting the data. I am also very grateful to Jeanne Charn, Mary Spector and Dalié Jiménez, for their helpful comments on earlier drafts of this paper. Thanks also to the members of the joint University of Maryland/University of Baltimore Law Schools Junior Faculty Workshop.

for the quality of justice,”<sup>1</sup> the profession can do better. This article proposes suggestions for further study, and several common sense reforms.

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<sup>1</sup> MODEL RULES OF PROF'L CONDUCT pmb1. ¶ 1 (2011).

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“We’re watching a fight between two players, one a skilled repeat gladiator, and one who’s thrown into the ring for the first time and gets clubbed over the head before they even get a sense of what the rules are.”  
- Elizabeth Warren, 2006.<sup>2</sup>

## INTRODUCTION

This paper examines the litigation outcomes achieved by a specific type of plaintiff: entities that purchase defaulted consumer debt from banks for pennies on the dollar, and then file lawsuits against millions of consumers for the full face value of the debt. Banks sell this junk debt after they charge it off pursuant to Treasury Regulations, and then take the full face value of the debt as a loss for tax purposes.<sup>3</sup> Junk debt arises primarily from credit cards and other unsecured debt.<sup>4</sup> It is called “junk” not only because of its low price, but also because it is often sold pursuant to “as is” contracts with broad disclaimers of warranty, with little or no documentation other than an Excel spreadsheet listing of accounts.<sup>5</sup>

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<sup>2</sup> Michael Rezendes & Francie Latour, *No Mercy for Consumers*, BOSTON GLOBE, July 30, 2006, [http://www.boston.com/news/specials/debt/part1\\_main/](http://www.boston.com/news/specials/debt/part1_main/) (quoting Elizabeth Warren).

<sup>3</sup> This “loss” is comprised not only of principal loaned, but also of all accrued interest, late fees, over-limit fees, and whatever other discretionary fees may have been added, all of which serve to increase the amount of the loss for tax purposes. The Uniform Retail Credit Classification and Account Management Policy requires the bank to charge-off an account 180 days after delinquency. Uniform Retail Credit Classification and Account Management Policy, 65 Fed. Reg. 36903 (June 12, 2000), *available at* <http://1.usa.gov/GTwzVz>. *See also* Internal Revenue Code, Bad Debts, 26 U.S.C. § 166 (2012) (providing deduction for worthless debt); 26 C.F.R. § 1.166-2(d) (2012) (evidence of worthlessness of debt as applied to banks); Rev. Rul. 2001-59, <http://1.usa.gov/GU4UGw>.

<sup>4</sup> Increasingly banks are starting to sell, and junk debt investors are starting to purchase deficiencies from secured consumer debt, such as car loans, and foreclosure deficiencies. *See infra* note 46 and accompanying text.

<sup>5</sup> According to a January, 2013 study by the Federal Trade Commission of over 5,000 portfolios of sale, four cents on the dollar is the national average, spanning the time frame between March and August of 2009. U.S. FEDERAL TRADE COMM’N, THE STRUCTURE AND PRACTICES OF THE DEBT BUYING INDUSTRY ii (2013) [hereinafter STRUCTURE & PRACTICES], *available at* <http://www.ftc.gov/os/2013/01/debtbuyingreport.pdf>. *Structure & Practices* is the first major study of the inner workings of the debt buying industry, however it provides no data on the litigation behavior or success of debt buyers, a

Lawsuits filed by junk debt buyers expose a business model that is, literally, the buying and selling of claims to be utilized in litigation for profit.<sup>6</sup> Short of voluntary payment, the primary goal of debt-buyer lawsuits is to turn unsecured debt into court judgments, fully secured and fully collectable through garnishment and other enforcement proceedings. As is pointed out in the Federal Trade Commission's 2009 report titled *Broken System* and elsewhere, in their rush to secure judgment, debt buyers often mislead consumers and courts.<sup>7</sup>

There is a widespread belief that in our broken system, small claims courts have become an extension of the debt collection industry. There are anecdotal reports that more than 95% of all collection cases end in a judgment in favor of the collector.<sup>8</sup> At

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subject which is left to this and other studies.

<sup>6</sup> Assume the following scenario which, for the sake of simplicity of illustration, will use simple, rather than compound interest: on December 31, a consumer owes \$1,000 on her credit card, all of which is principal and does not include any interest, late fees or other fees. She fails to pay her credit card bill, and never makes another payment. What happens? On February 1, she will receive a bill for the \$1,000, plus 29.99% interest based on the annual percentage rate, plus a late fee for \$39. She will continue to receive these charges for the next 5 months (for a total of 6 months, or 180 days until the creditor will "charge off" the account for tax purposes). By this time, the bill will be approximately \$1,394, or almost 40% higher than it was on the day that she defaulted. This \$1,000 loan, which now includes an extra \$400 tacked on since the day the consumer stopped paying, will be sold for \$56 (assuming a sales price of 4 cents on the dollar), and the consumer will then be sued by a debt buyer for \$1,400, plus attorneys' fees of 15%, or \$210. (This assumes they will not also be seeking prejudgment interest of 29.99%). For the consumer, the price of defaulting has suddenly become 161% of the principal of the amount loaned. For the debt buyer who invested \$56, the potential return on investment is 2,800%; \$56 invested and \$1,610 returned.

<sup>7</sup> *Regulate Junk Debt*, FREDERICK NEWS-POST, Dec 18, 2011, [http://www.fredericknewspost.com/archive/article\\_071a18fb-1f4c-5687-9899-faafbcf30d9b.html](http://www.fredericknewspost.com/archive/article_071a18fb-1f4c-5687-9899-faafbcf30d9b.html) ("Part of the confusion arising from this shady practice among consumers is whether the calls they receive are to collect legitimate debt, or whether they are being taken for a ride . . . A frightening angle to this is that junk debt purchasers can sue the alleged debtor based on little but a supporting affidavit.").

<sup>8</sup> See U.S. FED. TRADE COMM'N, REPAIRING A BROKEN SYSTEM: PROTECTING CONSUMERS IN LITIGATION AND ARBITRATION 7, n. 18 (2010) [hereinafter *BROKEN SYSTEM*], available at <http://www.ftc.gov/os/2010/07/debtcollectionreport.pdf>; Jessica Silver-Greenberg, *Lender Drops Pursuit of Debt*, WALL ST. J., June 24, 2011, at C1 ("Roughly 94% of collection cases filed against borrowers result in default judgment in favor of the lender, according to industry estimates.").

least one judge who handles debt buyer and collections cases reports that in over 90% of all such collection cases filed, the creditor lacks the requisite proof to prevail.<sup>9</sup> Instead of proof, arguably creditors rely on a *de facto* system of “default judgment justice” wherein the creditors know that very few defendants will ever challenge the lawsuit, and overwhelmed courts and judges will simply enter default judgments in order to keep the flood of paperwork from bringing the workflow to a halt.

There is a developing literature which examines the multitude of doctrinal and due process concerns that arise from this system of “default judgment justice.”<sup>10</sup> The Federal Trade Commission, the Consumer Financial Protection Bureau (“CFPB”), the National Consumer Law Center, and many others have published important studies,<sup>11</sup> and academics have demonstrated relatively recent but growing interest.<sup>12</sup>

In separate studies of Texas and Indiana, Mary Spector and Judith Fox have done groundbreaking small-scale empirical

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<sup>9</sup> Jessica Silver-Greenberg, *Problems Riddle Moves to Collect Credit Card Debt*, N.Y. TIMES, Aug. 13, 2012, at A1 (“I would say that roughly 90 percent of the credit card lawsuits are flawed and can’t prove the person owes the debt’ said Noah Dear, a civil court judge in Brooklyn . . .”). See also William Glaberson, *In New York, Some Judges Now Skeptical About Debt Collectors’ Claims*, N.Y. TIMES, May 7, 2010, at A15.

<sup>10</sup> See, e.g., RICK JURGENS & ROBERT J. HOBBS, NAT’L CONSUMER LAW CTR., *THE DEBT MACHINE: HOW THE COLLECTION INDUSTRY HOUNDS CONSUMERS AND OVERWHELMS COURTS* 1 (2010), available at <http://www.nclc.org/images/pdf/pr-reports/debt-machine.pdf> (“In pursuit of judgments, creditors and collectors have swamped small claims and other state courts with a torrent of lawsuits.”); BROKEN SYSTEM, *supra* note 8; STRUCTURE & PRACTICES, *supra* note 5.

<sup>11</sup> See sources cited *supra* note 10.

<sup>12</sup> See, e.g., Judith Fox, *Do We Have a Debt Collection Crisis? Some Cautionary Tales of Debt Collection in Indiana*, 24 LOY. CONSUMER L. REV. 355 (2011); Elizabeth Warren, *Unsafe at Any Rate*, 2007 DEM. J. 8, 10 (2007) (“Anxiety and shame have become constant companions for Americans struggling with debt. Since 2000, families have filed nearly 10 million petitions for bankruptcy. Today about one in every seven families in America is dealing with a debt collector.”); Elizabeth Warren & Oren Bar-Gill, *Making Credit Safer*, 175 U. PA. L. REV. 101, 160 (2008) (noting the widespread negative effects of consumer debts and that “[n]ot even death will insulate families from the sting of aggressive debt collectors. Sears, for example, had a special team to collect from bereaved families when a customer died still owing a credit balance—even though the family had no legal obligation to pay these debts.”); Young Walgenkim, *Killing “Zombie Debt” Through Clarity and Consistency in the Fair Debt Collection Practices Act*, 24 LOY. CONSUMER L. REV. 65 (2011).

quantitative and qualitative analyses of state court filings in these cases.<sup>13</sup> The National Center for State Courts has done a rough categorization of “contract” cases filed, most of which are collection cases.<sup>14</sup> Important new analyses, notably by Dalié Jiménez, are emerging of the “as is” sales and purchase contracts which exist between original creditors and debt buyers, and between initial and subsequent purchasers.<sup>15</sup> Regulatory actions, notably by the Office of the Comptroller of the Currency (“OCC”), have resulted in settlements, including one where JP Morgan Chase “neither admits nor denies” that in its collection litigation it filed false affidavits, filed false documents that resulted in financial errors in favor of the bank, and failed to have in place processes and systems to ensure the accuracy and integrity of accounts sold to debt buyers.<sup>16</sup> In light of the flood of lawsuits, the anecdotal reports regarding the high rates of default, and the findings of the regulators regarding widespread abuse, it is appropriate to do a broad scale statistical analysis of court filings and litigation outcomes.

This paper analyzes 4,400 cases filed in Maryland collection courts by eleven separate debt buyers, each of whom filed more than 1,000 cases per year during the 2009-2010 two year sample period.<sup>17</sup> The subject debt buyers were selected because

<sup>13</sup> See discussion *infra* Part I.E.

<sup>14</sup> See ROBERT C. LAFOUNTAIN ET AL., NATIONAL CENTER FOR STATE COURTS, EXAMINING THE WORK OF STATE COURTS: AN ANALYSIS OF 2010 STATE COURT CASELOADS 11 (2012), available at [http://www.courtstatistics.org/other-pages/~media/microsites/files/csp/data%20pdf/csp\\_dec.ashx](http://www.courtstatistics.org/other-pages/~media/microsites/files/csp/data%20pdf/csp_dec.ashx).

The author has spoken with a researcher at NCSC to confirm this.

<sup>15</sup> Dalié Jiménez, *Illegality in the Sale and Collection of Consumer Debts*, (December 5, 2013), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2250784](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2250784).

<sup>16</sup> Consent Order at Art. I, ¶ 2, Art. IV, ¶ 1(p), JPMorgan Chase Bank, N.A., No. 2013-138 (Office of the Comptroller of the Currency, U.S. Dep’t of the Treasury Sept. 18, 2013), available at <http://www.occ.gov/static/enforcement-actions/ea2013-138.pdf>.

<sup>17</sup> The debt buyers were:

Legal Name	Name Used in Case Search
Pasadena Receivables, Inc.	Pasadena
Midland Funding LLC aka Midland Credit Management	Midland
Arrow Financial Services, LLC	Arrow
LVNV Funding, LLC	LVNV
Asset Acceptance, LLC	Asset

they filed a large number of cases and, at the time they were selected, they comprised a representative sample of large publicly traded national corporate plaintiffs as well as small closely held regional and local corporate plaintiffs.<sup>18</sup> In order to capture the largest percentage of cases that had reached a judgment, dismissal or other final disposition as of the cutoff date for gathering the data,<sup>19</sup> the data sample is comprised of cases that were filed by the subject debt buyers between January 1, 2009 and December 31, 2010.<sup>20</sup>

This study uses a larger statistical sample with more metrics and more analysis than is available in prior studies. In contrast to the two principal recent statistical studies of debt buyers,<sup>21</sup> this study is not confined to a single court or county forum. Rather, the cases in this study's sample were drawn from a pool of all 26 District Court jurisdictions in the state.<sup>22</sup>

The empirical findings of this study confirm the widespread belief that in litigation, debt buyers employ a high volume default judgment business model, and that their legal pleadings, evidence and tactics are rarely exposed to the adversary process. Principal findings of this study include: (1) about 1 in 4 cases filed were dismissed by the court because the summons was never served on the defendant; (2) less than 2 in 10 defendants who were served with a summons filed a response (known in Maryland as a "Notice of Intention to Defend"); (3) in almost 7 out of 10 cases, debt buyers obtained judgments against defendants in

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Portfolio Recovery Associates	Portfolio
Cavalry Portfolio Services LLC	Cavalry
Fradkin & Weber, PA	Fradkin
Advantage Assets II, INC	Advantage
North Star Capital Acquisition	North Star
Atlantic Credit & Finance, INC	Atlantic

<sup>18</sup> There has since been some consolidation in the industry. *See infra* note 115.

<sup>19</sup> Cutoff date was March 31, 2012.

<sup>20</sup> Of the 4,400 cases sampled, as of the March 31, 2012 cutoff date, all but 381 cases (8.65%) had reached final disposition through a money judgment, bankruptcy, dismissal or settlement.

<sup>21</sup> *See* discussion of Spector and Fox studies *infra* Part I.E.

<sup>22</sup> Maryland has 26 counties. The District Court has exclusive original jurisdiction over small claims (\$5,000 or less), and concurrent jurisdiction with the Circuit Court on claims over \$5,000 up to \$30,000. MD. CODE ANN., CTS. & JUD. PROC. §§ 3-401, 3-405 (West 2011).

an average amount of more than \$3,000; (4) the vast majority of cases do not result in a voluntary settlement; (5) more than 99% of the judgments against defendants were obtained without a trial; (6) fewer than 2% of defendants were represented by a lawyer, and those who did have a lawyer achieved far better outcomes than those who did not have a lawyer; and (7) based on the 2010 census data, there appears to be a disparate impact on racial minorities.

The data and analysis of this study has important implications for advocates, judges, litigants, legislators, regulators, policy makers and academics.

This paper is divided into four parts. Part I describes the nature of the debt buying and debt collection industry, and surveys the existing literature on lawsuits filed by debt buyers. Part II describes the methodology of the study and reports its results. Part III contains my analysis and draws conclusions. Part IV contains my recommendations for further study and action.

## I. THE DEBT INDUSTRY AND PREVIOUS STUDIES

### A. *Debt Collectors*

Debt collection cases have concerned scholars and policy makers for decades. In 1974, David Caplovitz published *Consumers in Trouble*, which constituted the first broad empirical study of consumers facing debt collection in the United States.<sup>23</sup> In his Foreword to the Caplovitz study, United States Senator William Proxmire concluded that when it comes to collection of consumer debt, “[o]ur legal system benefits the unscrupulous and penalizes the weak.”<sup>24</sup> Many of Caplovitz’s findings from more than forty years ago still apply to today’s “consumers in trouble.” Caplovitz found that consumers who default on financial obligations are rarely the “deadbeats” of popular myth, a fact which remains true today, and which even the collection industry ad-

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<sup>23</sup> DAVID CAPLOVITZ, CONSUMERS IN TROUBLE: A STUDY OF DEBTORS IN DEFAULT xii (1974). Caplovitz wrote about law suits filed by original creditors; not the debt buyers of this study, because debt buyers did not exist in 1974. His study was comprised largely of in-person interviews of debtors. He found that in many cases, these consumers had valid defenses to the lawsuits.

<sup>24</sup> *Id.*

mits.<sup>25</sup> He also found that the people most likely to be in trouble were the poor,<sup>26</sup> and that consumers usually get into trouble due to circumstances beyond their control.<sup>27</sup> Caplovitz concluded that when they do get into trouble, consumers face a debt collection court system that is unfair to them.<sup>28</sup> It is notable that the Caplovitz study was published in 1974, three years before the passage of the Fair Debt Collection Practices Act, which was designed to correct collection abuses.<sup>29</sup>

When it comes to the perceived fundamental unfairness of the debt collection system, little has changed in the intervening years. In 2010, the Federal Trade Commission concluded that in today's collection system, "neither litigation nor arbitration currently provides adequate protection for consumers. The system for resolving disputes about consumer debts is broken."<sup>30</sup> Some of the hallmarks of this broken system include lack of data integrity, lack of proof, inadequate documentation, robo-signing and other unfair and deceptive acts and practices.<sup>31</sup> Judges, advocates, academics, federal regulators,<sup>32</sup> state regulators,<sup>33</sup> Congress,<sup>34</sup> and the

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<sup>25</sup> CAPLOVITZ, *supra* note 23, at x (*Foreword* by William Proxmire); Mike Bevel, *You're Doing it Wrong: Misrepresenting the Collection Industry*, INSIDEARM, April 29, 2011, <http://www.insidearm.com/opinion/youre-doing-it-wrong-misrepresenting-the-collection-industry/> ("At no point would a reputable collection agency doing its job correctly ever refer to a consumer as a deadbeat.").

<sup>26</sup> CAPLOVITZ, *supra* note 23, at 4.

<sup>27</sup> 48% of consumers were in trouble because of a loss of income and 11% due to unexpected increases in their expenses, such as medical bills. *Id.* at 53. Only 5% were what Caplovitz regarded as the stereotype of "deadbeat" debtors. *Id.* at 54.

<sup>28</sup> *Id.* at 291-301.

<sup>29</sup> Sen. Proxmire, who wrote the foreword to *Consumers in Trouble*, was also chair of the Senate Banking Committee during the passage of the FDCPA.

<sup>30</sup> BROKEN SYSTEM, *supra* note 8, at i.

<sup>31</sup> "Robo-signing" can include signing affidavits which falsely claim to be based on personal knowledge, and having third parties sign affidavits in the name of the alleged affiant. The later practice was recently condemned by Maryland's Court of Appeals. *Atty. Griev. Comm'n. v. Dore*, 73 A.3d 161, 178 (Md. 2013).

<sup>32</sup> CONSUMER FIN. PROT. BUREAU, FAIR DEBT COLLECTION PRACTICES ACT ANNUAL REPORT (2013). The FTC and CFPB jointly held a roundtable on debt collection in mid-2013. See *Life of a Debt: Data Integrity in Debt Collection*, FED. TRADE COMM'N (June 6, 2013) [hereinafter *Life of a Debt*], <http://www.ftc.gov/news-events/events-calendar/2013/06/life-debt-data-integrity-debt-collection>. Since the passage of the Fair Debt Collection Practices Act, the Federal Trade Commission has been responsible for consumer pro-

tection in debt collection. The Dodd-Frank Act shifted much of that responsibility from the FTC to the newly created Consumer Financial Protection Bureau. The CFPB now shares overall enforcement responsibility with the FTC and other agencies including the Office of the Comptroller of the Currency and the Federal Communications Commission. Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 11-203, §1089, 124 Stat. 1376, 2002-93 (2010) (amending the Fair Debt Collection Practices Act, 15 U.S.C. §§1692 *et seq.*). The CFPB can prescribe rules regarding debt collection, issue guidance, collect data, undertake research and conduct educational campaigns. In particular, the CFPB has the power to regulate large non-bank actors on consumer financial services including debt collection, and has recently begun to use that authority. It is anticipated that the CFPB will promulgate new rules on debt buying in the near future.

<sup>33</sup> Maryland has been a particularly active regulator in this field. For example, the following enforcement actions were undertaken in the last few years, contributing to the staying or dismissal of tens of thousands of debt buyer lawsuits: Summary Order to Cease and Desist, Portfolio Recovery Group, No. CFR-FY2012-074 (Md. State Collection Agency Licensing Bd. Apr. 9, 2013), *available at* <http://www.dllr.state.md.us/finance/consumers/pdf/portfoliorecc&d.pdf>; Settlement Agreement and Consent Order at 5-6, Credit Service, LLC, No. CFR-FY2012-077 (Md. State Collection Agency Licensing Bd. Oct. 14, 2011), *available at* <http://www.dllr.state.md.us/finance/consumers/pdf/creditservicessettlement.pdf> (“Filing actions . . . intended to obtain judgment on affidavit . . . but which contained affidavits that were based . . . on the affiant’s knowledge, information and belief, a standard insufficient to obtain such judgments . . . [c]laiming and receiving unauthorized attorney’s fees . . . [c]laiming and receiving prejudgment interest that included compound interest and misrepresenting the correct amount of principal and interest in the documents filed . . . [f]iling complaints alleging ownership of particular consumer claims but which complaints contained invalid or deficient assignment documents . . . filing complaints beyond the 3-year statute of limitations . . . [m]ailing collection letters to consumers threatening to file lawsuits based on consumer claims that were already beyond the 3-year statute of limitations”); Settlement Agreement and Consent Order at 4-5, Sunshine Financial Group, LLC, Nos. CFR-FY2011-135 & CFR-FY2012-019 (Md. State Collection Agency Licensing Bd. Sept. 9, 2011), *available at* <http://www.dllr.state.md.us/finance/consumers/pdf/sunshinesettlement.pdf>; Settlement Agreement at 4, Worldwide Asset Management et al., No. DFR-FY2010-221 (Md. State Collection Agency Licensing Bd. Aug. 10, 2010), *available at* <http://www.dllr.state.md.us/finance/consumers/pdf/worldwidesettlement.pdf> (“[A] debt collector . . . may not ‘[c]laim, attempt, or threaten to enforce a right with knowledge that the right does not exist.’ . . . [t]he Agency has reasonable grounds to believe that respondents engaged in unlicensed collection agency activities and that all Respondents engaged in other violations . . . referenced above.”). *See also* Press Release, Office of Commc’ns & Pub. Affairs, Md. Judiciary, Thousands of District Court of Maryland Cases Dismissed (Mar. 17, 2011), *available at*

media have broadly exposed these and other problems unique to debt collection.<sup>35</sup>

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<http://www.courts.state.md.us/media/news/2011/pr20110317.html> (announcing the dismissal of 10,168 Midland Funding cases filed between January 15 2007-January 15, 2010 and noting also that 27,000 Mann Bracken cases were dismissed in 2010); Press Release, Office of Commc'ns & Pub. Affairs, Md. Judiciary, District Court of Maryland Dismisses Sunshine Financial Group Debt Collection Cases (Sept. 21, 2011), *available at* <http://www.courts.state.md.us/media/news/2011/pr20110921.html> (announcing that 314 cases were dismissed and 323 reduced to remove atty's fees.); Press Release, Office of Commc'ns & Pub. Affairs, Md. Judiciary, District Court of Maryland Dismisses Thousands More Debt Collection Cases (Oct. 11, 2012), *available at* <http://www.courts.state.md.us/media/news/2012/pr20121011.html>.

<sup>34</sup> Press Release, Sen. Sherrod Brown, Following Call to Rein in Debt Collection Industry, Brown Holds Hearing on Efforts to End Consumer Abuses (July 17, 2013), *available at* <http://www.brown.senate.gov/newsroom/press/release/following-call-to-rein-in-debt-collection-industry-brown-holds-hearing-on-efforts-to-end-consumer-abuses> ("Former bank employees have reported that they were instructed to '[g]o ahead and sign' affidavits verifying consumer debts, even when they didn't have documentation . . . [w]hen debt buyers purchase these loans from the biggest banks, they sign 'as is' contracts, giving banks cover to offload debts for collection that may be inaccurate, incomplete, or legally uncollectable." (quoting Sen. Sherrod Brown)).

<sup>35</sup> See, e.g., Jim Dwyer, *In Civil Court, Reckoning Awaits Those Who Got Seduced by Plastic*, N.Y. TIMES, Oct. 11, 2008, at A19; Jeff Horwitz, *It's Robo Redux: Card Lawsuits Stalk Banks*, AM. BANKER, Jan. 31, 2012, at 1. The *Boston Globe* published a very important series of articles in 2006, which paved the way for other reporters. See Rezendes & Latour, *supra* note 2 (mentioning the activities of the Goldstone brothers – Mass. Debt buyer) ("[A]lmost unnoticed by policy-makers, many millions of Americans have slid, or been pushed, into a debtor's hell[.]") (Quoting Elizabeth Warren, "We're watching a fight between two players, one a skilled repeat gladiator, and one who's thrown into the ring for the first time and gets clubbed over the head before they even get a sense of what the rules are."); Beth Healy, *Dignity Faces a Steamroller*, BOSTON GLOBE, July 31, 2006, [http://www.boston.com/news/specials/debt/part2\\_main/](http://www.boston.com/news/specials/debt/part2_main/) ("The 'people's court' has become the collectors' court . . . [i]t is a de facto arm of a fast-growing and aggressive industry that has swamped court dockets with lawsuits[.]") (recounting the case of a Judge Barrett, who ordered a defendant to surrender her jewelry or be imprisoned) ("Often, debtors are treated with less courtesy than the accused felons in the criminal court across the hall, and their rights are less respected."); Walter V. Robinson & Michael Rezendes, *Enforcers' Might Goes Unchecked*, BOSTON GLOBE, Aug. 1, 2006, [http://www.boston.com/news/specials/debt/part3\\_main/](http://www.boston.com/news/specials/debt/part3_main/) (describing the abuses of Boston "Constables" publicly appointed collectors); Walter V. Robinson & Beth Healy, *Regulators, Policy Makers Seldom Intervene*, BOSTON GLOBE, Aug. 2, 2006, [http://www.boston.com/news/specials/debt/part4\\_main/](http://www.boston.com/news/specials/debt/part4_main/) (quoting Donald Friedman of debt buyer Liberty Point Corp. "[debt buying] is one of

Nowhere is the breakdown in the collections system more evident than in the context of lawsuits filed by junk debt buyers. Junk debt buyers are even further removed from personal relationships with consumers than the commercial lenders in the Caplovitz study. It is therefore unsurprising that these investors in junk debt would resort to “bureaucratic procedures to collect debts,” a trend that has made debt collection the most complained about business under the Federal Trade Commission’s jurisdiction.<sup>36</sup>

### *B. Debt Buying*<sup>37</sup>

The highly successful debt buyer business model is simple to describe. First, buy debts for pennies on the dollar;<sup>38</sup> second, clog the courts with small claims lawsuits; third, rely on the fact that defendants are not likely to contest the cases or show up in courts; and finally, bank on the fact that small claims court judges often do not enforce basic rules of evidence or procedure in uncontested cases.

Over the past two decades, the seemingly easy money to be made from investing in and pursuing junk debt has caused the

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the sexiest, one of the most financially lucrative businesses you can get into.” (“[I]n spite of all this, there is an eerie silence among regulators, policy makers, and legislators.”).

<sup>36</sup> STRUCTURE & PRACTICES, *supra* note 5, at i.

<sup>37</sup> This section contains a brief overview of the junk debt buyer industry. For a more detailed overview, see CLAUDIA WILNER & NASOAN SHEFTEL-GOMES, LEGAL AID SOC’Y ET AL., DEBT DECEPTION: HOW DEBT BUYERS ABUSE THE LEGAL SYSTEM TO PREY ON LOWER-INCOME NEW YORKERS (2010), *available at* [http://www.nedap.org/pressroom/documents/DEBT\\_DECEPTION\\_FINAL\\_WEB.pdf](http://www.nedap.org/pressroom/documents/DEBT_DECEPTION_FINAL_WEB.pdf); RACHEL TERP & LAUREN BOWNE, EAST BAY CMTY. LAW CTR. & CONSUMERS UNION OF UNITED STATES, PAST DUE: WHY DEBT COLLECTION PRACTICES AND THE DEBT BUYING INDUSTRY NEED REFORM NOW (2001), *available at* [http://www.ebcl.org/documents/Past\\_Due\\_Report\\_2011.pdf](http://www.ebcl.org/documents/Past_Due_Report_2011.pdf); JURGENS & HOBBS, *supra* note 10; Peter A. Holland, *The One Hundred Billion Dollar Problem in Small Claims Court: Robo-Signing and Lack of Proof in Debt Buyer Cases*, 6 J. BUS. & TECH. L. 259 (2011).

<sup>38</sup> The FTC found that the range for non-mortgage debt examined in their study was between 1.5 and 6.6 cents on the dollar for charged-off portfolios. STRUCTURE & PRACTICES, *supra* note 5, at D-6. The average across all debt buyer activity was about 4 cents on the dollar. *Id.* at ii. In fact, some debt sells for less than one penny on the dollar.

industry to explode<sup>39</sup> to the point where today the face value of purchased credit card debt exceeds \$100 billion annually.<sup>40</sup> The explosive growth of this industry has created an array of challenges to the courts, to the consumer defendants, and to notions of constitutional due process. One of the most basic challenges is the fact that consumers do not recognize the name of the debt buyer plaintiff, or the amount being sued on. This adds to the exceedingly high rate of default judgments.<sup>41</sup>

The confusion that results from the buying and selling of legal claims was observed by Lord Coke almost 500 years ago when he described:

[T]he great wisdom and policy of the sages and founders of our law, who have provided, that no possibility, right, title, nor thing in action, shall be granted or assigned to strangers, for that would be the occasion of multiplying of contentions and suits, of great oppression of the people.<sup>42</sup>

Lord Coke's observation foreshadowed what Caplovitz eventually concluded:

[T]he breakdown in credit transactions that results in lawsuits is . . . very much a product of the anonymity of consumer transactions in urban America. It is this lack

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<sup>39</sup> Modern day debt buying is often said to have originated with the sale of debts by the FDIC and the Resolution Trust Corporation in the wake of the savings and loan crisis. Robert M. Hunt, *Collecting Consumer Debt in America*, BUS. REV., Q2 2007, at 11, available at [http://www.philadelphiafed.org/research-and-data/publications/business-review/2007/q2/hunt\\_collecting-consumer-debt.pdf](http://www.philadelphiafed.org/research-and-data/publications/business-review/2007/q2/hunt_collecting-consumer-debt.pdf); STRUCTURE & PRACTICES, *supra* note 5 at 17. The debt buying market is now dominated by large participants. *Id.* at i (the nine largest debt buyers held over 75% of debts sold in 2008); Defining Larger Participants of the Consumer Debt Collection Market, 77 Fed. Reg. 65,775 (Oct. 31, 2012) (amending 12 C.F.R. pt. 1090 to define larger participants in the consumer debt collection industry, including debt buyers).

<sup>40</sup> Jessica Silver-Greenberg, *Boom in Debt Buying Fuels Another Boom – In Lawsuits*, WALL ST. J., Nov. 29, 2010, at A1 (“More than 450 debt buyers scooped up an estimated \$100 billion in distressed loans last year, according to the latest estimates by Kaulkin Ginsburg, a debt-collection industry adviser.”); The FTC’s report utilized data on debt portfolios worth \$143 billion, bought by the 9 largest debt buyers. STRUCTURE & PRACTICES, *supra* note 5, at 8.

<sup>41</sup> See *Life of A Debt*, *supra* note 32.

<sup>42</sup> *Lampet’s Case*, (1612) 77 Eng. Rep. 994 (K.B.) 997 (emphasis added).

of knowledge of each other by the parties to these transactions that contributes to mistrust, misinterpretations of the reasons for the default, and the employment of harsh, bureaucratic procedures to collect debts. In this respect we are dealing . . . with an urban problem in which trust, based on personal relationships, is absent.<sup>43</sup>

Today's debt buyer lawsuits involve the purchase, sale, and suing upon old, unreliable, inaccurate documentation of abandoned consumer credit accounts, consisting primarily of lending products such as subprime credit cards with (what used to be) usurious interest rates,<sup>44</sup> accumulated late fees, over limit fees, and monthly usage fees. Debt buyers pay pennies on the dollar for accounts abandoned by the original creditor, sold "as is" with little or no documentation, and lots of disclaimers of warranty.<sup>45</sup>

Junk debt investors purchase consumer debt from large financial institutions in portfolios, containing thousands of individual debts. Although the cases in this study are comprised primarily of credit card debt, it is important to note that all kinds of consumer debt is being bought and sold today, including mortgage foreclosure deficiencies.<sup>46</sup> Scholars have documented some

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<sup>43</sup> CAPLOVITZ, *supra* note 23, at 9.

<sup>44</sup> In 1978, the U.S. Supreme Court held that a national bank may export the home state's interest rate, regardless of state usury caps. *Marquette National Bank of Minneapolis v. First of Omaha Service Corporation*, 439 U.S. 299, 308, n.24 (1978).

<sup>45</sup> Typical disclaimers of warranty include that the account may already be satisfied, that the debtor may have prevailed at trial, that the debtor was the victim of identity theft, that the debtor declared bankruptcy, that the account is beyond the statute of limitations, that the debtor is dead, that the amount of the alleged debt is only approximate, and that documentation may not exist. *See, e.g., Loan Sale Agreement By and Among FIA Card Services, N.A. and CACH, LLC* (Apr. 14, 2010) [hereinafter *Loan Sale Agreement*], *available at* <https://s3.amazonaws.com/s3.documentcloud.org/documents/329733/fia-to-cach-forward-flow.pdf>. *See also* Jiménez, *supra* note 15.

<sup>46</sup> Debt buyer interest in foreclosure deficiency judgments has been known since at least 2011. Jessica Silver-Greenberg, *The House Is Gone But The Debt Lives On*, WALL ST. J., Oct 1, 2011, <http://online.wsj.com/news/articles/SB10001424053111904060604576572532029526792> ("The increase in deficiency judgments has sparked a growing secondary market. Sophisticated investors are 'ravenous for this debt and ramping up their purchases[.]"). *See also* Douglas French, *The New Deficiency Market*, MISES ECON. BLOG, (Oct 4, 2011), <http://archive.mises.org/18607/the-new->

of the problems inherent in this business model.<sup>47</sup> More recently, regulators and mainstream media have expressed concern regarding the “as is” terms, without representations or warranties, on which these debts are purchased. The FTC and the OCC in particular have questioned the adequacy of the information debt buyers receive with purchased debts.<sup>48</sup> The FTC’s *Structure and Practices* study revealed that debt sale and purchase agreements between the creditor and the debt buyers generally limit the availability of key documents, such as account statements and credit agreements.<sup>49</sup> Further, the debt sale agreements often disclaim the accuracy of the information provided and explicitly disclaim warranties of title, validity, enforceability, collectability, and accuracy.<sup>50</sup> In 2009, the FTC found that information provided to debt buyers was “so deficient that collectors [sought] pay-

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deficiency-market/. This trend only seems likely to increase, as suits on deficiency judgments generally rise. See Kimbriell Kelly, *Lenders Seek Court Actions Against Homeowners Years After Foreclosure*, WASH. POST, June 15, 2013, [http://www.washingtonpost.com/investigations/lenders-seek-court-actions-against-homeowners-years-after-foreclosure/2013/06/15/3c6a04ce-96fc-11e2-b68f-dc5c4b47e519\\_story.html](http://www.washingtonpost.com/investigations/lenders-seek-court-actions-against-homeowners-years-after-foreclosure/2013/06/15/3c6a04ce-96fc-11e2-b68f-dc5c4b47e519_story.html).

<sup>47</sup> Lauren Goldberg, *Dealing in Debt: The High-Stakes World of Debt Collection After FDCPA*, 79 S. CAL. L. REV. 711 (2005) (an early report on abusive collection by debt buyers); Holland, *supra* note 37 (reporting abuses in the small claims jurisdiction in Maryland); Sam Glover, *Has the Flood of Debt Collection Lawsuits Swept Away Minnesotans’ Due Process Rights*, 35 WM. MITCHELL L. REV. 1115 (2008) (reporting the “flood” of collection suits and consequent abuses in Minnesota); Neil L. Sobol, *Protecting Consumer From Zombie-Debt Collectors*, NEW MEXICO L. REV. (forthcoming 2014), available at <http://ssrn.com/abstract=2350555>. An additional important aspect of the problem, not treated in this article, is the negative impact on the creditworthiness of debtors who fall victim to abusive collection practices. See Mary Spector, *Where the FCRA Meets the FDCPA: The Impact of Unfair Collection Practices on the Credit Report*, 20 GEO. J. ON POVERTY L. & POL’Y 479 (2013).

<sup>48</sup> STRUCTURE & PRACTICES, *supra* note 5, at 35-36.

<sup>49</sup> *Id.*

<sup>50</sup> Jiménez, *supra* note 15, at 4. Note however that representatives of the debt collection industry deny that this is current practice. See *Life of a Debt*, *supra* note 32; *Shining a Light on the Consumer Debt Industry: Hearing Before the Subcomm. on Financial Institutions and Consumer Protection of the S. Comm. on Banking, Housing, and Urban Affairs*, 113th Cong. (July 17, 2013) [hereinafter *Statement of Corey Stone*], available at [http://www.banking.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore\\_id=293a7183-c6c6-4753-97a6-a44c859dc093](http://www.banking.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=293a7183-c6c6-4753-97a6-a44c859dc093) (testimony of Corey Stone, Assistant Director, Office of Deposits, Cash, Collections, and Reporting Markets of the Consumer Financial Protection Bureau). These denials are difficult to verify, because debt buyers usually refuse to produce the contracts.

ment from the wrong consumer or demand[ed] the wrong amount.”<sup>51</sup>

The lack of proof, disclaimers of warranty and unreliable record keeping have led to significant criticism and threats of regulatory action to strengthen supervision of the debt buying business.<sup>52</sup> This criticism and the threat of regulatory intervention have already led one major bank to cease its sale of defaulted consumer debt altogether.<sup>53</sup> Despite these problems, the debt buying industry remains strong and has even begun to expand internationally, with industry leader Encore Capital recently acquiring the English debt buyer Cabot Financial.<sup>54</sup>

### *C. Debt Buyer Collection Litigation*

The debt buying business model has been to flood the courts across the country, resulting in hundreds of millions of dollars of default judgments entered against consumers.

Maryland provides a good example of how this business model has affected some courts. In two of Maryland’s largest jurisdictions, consumers sued by debt buyers for only a few hundred or a few thousand dollars are summoned to appear in a courtroom in order to engage in “resolutions conferences” with sophisticated plaintiffs’ lawyers.<sup>55</sup> These meetings occur inside of

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<sup>51</sup> FED. TRADE COMM’N, COLLECTION CONSUMER DEBTS: THE CHALLENGE OF CHANGE 22 (2009).

<sup>52</sup> See *infra* notes 79-80 and accompanying text.

<sup>53</sup> Maria Aspan & Jeff Horwitz, *Chase Halts Card Debt Sales Ahead of Crackdown*, AM. BANKER, Jul 1, 2013, [http://www.americanbanker.com/issues/178\\_126/chase-halts-card-debt-sales-ahead-of-crackdown-1060326-1.html](http://www.americanbanker.com/issues/178_126/chase-halts-card-debt-sales-ahead-of-crackdown-1060326-1.html).

<sup>54</sup> Saabira Chaudhuri, *Encore Capital Buys Majority Stake in Cabot Credit For \$192 Million*, WALL ST. J., May 30, 2013, <http://online.wsj.com/article/BT-CO-20130530-704282.html>.

<sup>55</sup> Maria Aspan, *Courthouse ‘Rocket Dockets’ Give Debt Collectors Edge Over Debtors*, AM. BANKER, Feb. 11, 2013, [http://www.americanbanker.com/issues/179\\_29/courthouse-rocket-dockets-give-debt-collectors-edge-over-debtors-1065545-1.html](http://www.americanbanker.com/issues/179_29/courthouse-rocket-dockets-give-debt-collectors-edge-over-debtors-1065545-1.html) (describing the “resolution conferences”). It is notable that the American Banker article comes more than four years after Baltimore Sun editorial called for an end to these “rocket docket,” noting that “The docket has offered few or no safeguards for defendants and carried the imprimatur of the judicial system . . .” Editorial, *Reform ‘Rocket Docket’*, BALTIMORE SUN, Jan. 27, 2009, [http://articles.baltimoresun.com/2009-01-27/news/0901260050\\_1\\_district-court-docket-maryland-hospitals](http://articles.baltimoresun.com/2009-01-27/news/0901260050_1_district-court-docket-maryland-hospitals).

courtrooms in which no judge is present to oversee the proceedings.<sup>56</sup> If the consumer fails to appear, the file goes to a judge for consideration of entry of an uncontested “affidavit judgment.” On the other hand, if the consumer does appear and demands a trial, there is no guarantee that a trial will be held on that date. Despite the fact that there is no judge present, the continued existence of these proceedings is premised on the notion that these “conferences” are a type of “pretrial conference” contemplated under the Maryland Rules.<sup>57</sup>

Like any other judgment creditor, once a debt buyer has secured a judgment, it has access to a panoply of enforcement methods.<sup>58</sup> The most powerful of these is a supplementary proceeding to force the judgment debtor to appear in court in order to provide information about the debtor’s assets.<sup>59</sup> The debtor is summoned to court to answer questions about their assets and income, to enable the creditor to locate assets to seize, accounts and employers to garnish and real property on which liens can be placed. If debtors do not appear in court, they risk being found in contempt and arrested, a phenomenon which Lea Shepard called “Creditor’s Contempt.”<sup>60</sup> In many arrest warrant cases, judges will order that the bond which the defendant paid be released to the judgment creditor.<sup>61</sup> As both Shepard and Caplovitz ob-

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<sup>56</sup> Aspan, *supra* note 55 (“What’s missing is a judge or other neutral moderator.”).

<sup>57</sup> *Id.* (noting that the judges of the Maryland District Court defend the practice and claim that it is voluntary). Although the Maryland Rules allow “pretrial conferences” to be ordered sua sponte in the District Court, the specific Rule at issue appears to contemplate a proceeding at which a judge is present. MD. R. 3-504(a) (“The court . . . may direct all parties to appear before it”); MD. R. 3-504(b-c)(listing administrative matters to be raised at the hearing such as witnesses to be relied upon and amendment of pleadings, and for the court to enter an order on such matters). In contrast, in 2008, here is how the Baltimore Sun described the proceedings, which have changed little since then: “Lawyers call up debtors one at a time to work out payment plans in rapid, on-the-spot settlements. Other days, lawyers haggle with debtors in the courthouse hallways. When cases go to judges, hospitals typically win after hearings that last a few minutes or less.” Fred Schulte & James Drew, *Their Day In Court*, BALTIMORE SUN, Dec. 22, 2008, [http://articles.baltimoresun.com/2008-12-22/news/0812210157\\_1\\_maryland-hospitals](http://articles.baltimoresun.com/2008-12-22/news/0812210157_1_maryland-hospitals).

<sup>58</sup> MD. R. 3-631.

<sup>59</sup> Known in Maryland as “Discovery in Aid of Enforcement.” MD. R. 3-633.

<sup>60</sup> Lea K. Shepard, *Creditor’s Contempt*, 2011 BYU L. REV. 1509 (2011).

<sup>61</sup> *Id.* at 1550.

served, creditor's contempt has the effect of extending the long-banned practice of imprisonment for debt into the twenty-first century.<sup>62</sup>

Imprisonment for contempt arising out of small consumer debt has attracted local and national media attention.<sup>63</sup> Policy makers have begun to respond, expressing concern and launching investigations into the practice.<sup>64</sup> Encore Capital disavowed arrest as a debt collection device due to negative publicity,<sup>65</sup> and others have criticized the tactic in the debt collection industry.<sup>66</sup> However, the problem continues to cause concern around the country.<sup>67</sup>

#### *D. The Maryland Experience*

Maryland has been a leader in combating the unique problems created by debt buyer litigation, as evidenced by effective

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<sup>62</sup> *Id.* at 1543-1544; CAPLOVITZ, *supra* note 23.

<sup>63</sup> Jessica Silver-Greenberg, *Welcome to Debtors' Prison, 2011 Edition*, WALL ST. J., Mar. 17, 2011 [hereinafter *Debtor's Prison, 2011 Edition*], <http://online.wsj.com/news/articles/SB10001424052748704396504576204553811636610> (noting that more than a third of states allow arrest for debt and that over 5,000 warrants had been issued since 2010); Alain Sherter, *Jailed for \$280: The Return of Debtors' Prisons*, CBS NEWS (Apr. 20, 2012, 1:04 PM), [http://www.cbsnews.com/8301-505144\\_162-57417654/jailed-for-\\$280-the-return-of-debtors-prisons/](http://www.cbsnews.com/8301-505144_162-57417654/jailed-for-$280-the-return-of-debtors-prisons/) (noting the problem and discussing the case of a woman imprisoned for \$280 alleged debt, which she did not owe, and quoting Illinois Att'y Gen. Lisa Madigan "'Too many people have been thrown in jail simply because they're too poor to pay their debts.'"); Susie An, *Unpaid Bills Land Some Debtors Behind Bars*, NAT'L PUB. RADIO (Dec. 12, 2011, 12:01 AM), <http://www.npr.org/2011/12/12/143274773/unpaid-bills-land-some-debtors-behind-bars>.

<sup>64</sup> *Welcome to Debtors' Prison, 2011 Edition, supra* note 63 (noting the state of Illinois and the FTC had launched investigations into the practice).

<sup>65</sup> *Id.*

<sup>66</sup> Mike Bevel, *Debt Collectors (Don't) Want to Send Debtors to Prison*, INSIDEARM.COM, (Nov. 23, 2011, 11:48 AM), <http://www.insidearm.com/daily/debt-collection-news/accounts-receivables-management/debt-collectors-dont-want-to-send-debtors-to-prison/> (criticizing Silver-Greenberg and other articles reporting on the same issue, apparently on the grounds that such arrests are not directly "because of debt", without denying that such arrests are requested by collectors).

<sup>67</sup> See, e.g., Martha C. White, *Lenders Use a New Dirty Trick to Jail You for Small Debts*, TIME, Aug. 28, 2012, <http://business.time.com/2012/08/28/lenders-use-a-new-dirty-trick-to-jail-you-for-small-debts/>.

private class action litigation,<sup>68</sup> aggressive enforcement actions by the state Department of Labor, Licensing and Regulation,<sup>69</sup> and measures taken by the Chief Judge of the District Court of Maryland, who has dismissed more than 20,000 debt buyer cases since 2010.<sup>70</sup> Most notably, effective as of January 1, 2012, Maryland adopted comprehensive amendments to its procedural court rules for obtaining default judgments, also known as “affidavit judgment,” in uncontested cases in the “small claims” division of its District Court.<sup>71</sup> Despite these efforts, Maryland courts remain flooded with debt buyer lawsuits, and neither the basic business model nor the ultimate outcome of these cases—massive default judgments—have been altered.

### *E. Existing Studies of Debt Buyer Activity*

One of the first reports on perceived litigation abuse by debt buyers came in a series of Boston Globe articles in 2006.<sup>72</sup> The Globe reported on threats of imprisonment,<sup>73</sup> gross inequality in the courtroom,<sup>74</sup> and shoddy evidence.<sup>75</sup> Although these abuses were recognized early, they have persisted. Since 2006, debt buy-

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<sup>68</sup> See *Bradshaw v. Hilco Receivables, LLC*, 765 F. Supp. 2d 719 (D. Md. 2011) (holding that “Hilco violated the [FDCPA] in filing lawsuits without a license in violation of the Maryland Collection Agency Licensing Act”); *Hauk v. LVNV Funding, LLC*, 749 F. Supp. 2d 358 (D. Md. 2010) (same); *Finch v. LVNV Funding, LLC*, 71 A.3d 193 (Md. Ct. Spec. App. 2013) (holding that judgments obtained when the plaintiff was not a licensed debt collector are void) *cert. denied* 77 A.3d 1084 (Md. 2013).

<sup>69</sup> See, *supra* Note 33.

<sup>70</sup> *Id.*

<sup>71</sup> MD. R. 3-306. For text and commentary on the extensive changes, see NOTICE OF PROPOSED RULE CHANGES: 171<sup>ST</sup> REPORT, STANDING COMMITTEE ON RULES OF PRACTICE & PROCEDURE, MD. CT. OF APPEALS 31-47 (2011).

<sup>72</sup> Rezendes & Latour, *supra* note 2; Healy, *supra* note 35; Robinson & Rezendes, *supra* note 35; Robinson & Healy, *supra* note 35.

<sup>73</sup> Healy, *supra* note 35 (“[S]uch threats are a common tool, both in small-claims court and in the district court civil sessions.”).

<sup>74</sup> See *id.*; Rezendes & Latour, *supra* note 2 (quoting Professor (now Senator) Elizabeth Warren, “We’re watching a fight between two players, one a skilled repeat gladiator, and one who’s thrown into the ring for the first time and gets clubbed over the head before they even get a sense of what the rules are.”)

<sup>75</sup> Rezendes & Latour, *supra* note 2 (recounting the case of a disabled veteran sued for debt while deployed; an affidavit filed by the plaintiff falsely claimed he was not in the military.).

ers have attracted increasing attention from advocates, regulators, and scholars.<sup>76</sup> In 2009, a legal support program for municipal employees published *Where's the Proof?* which is arguably the first study devoted solely to the perceived abuses of debt buyers.<sup>77</sup> The report provided some of the earliest hard statistics on debt buyer behavior, finding that less than six percent of debt buyers were willing or able to demonstrate proper chain of title of the debt being pursued.<sup>78</sup>

As of mid-2014, debt buyers have begun to receive serious regulatory scrutiny, with the CFPB's adoption of a rule to extend its regulatory supervision to larger participants in the debt collection industry,<sup>79</sup> and the Office of the Comptroller of the Currency's publication of its suggested "best practices" in debt sales.<sup>80</sup> Congress is also taking up the question of debt collection reform.<sup>81</sup>

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<sup>76</sup> *Supra* notes 33, 47 and 55.

<sup>77</sup> ROBERT MARTIN ET AL., DIST. COUNCIL 37 MUN. EMPS. LEGAL SERVS., *WHERE'S THE PROOF?* (2009), *available at* [http://www.dc37.net/benefits/health/pdf/MELS\\_proof.pdf](http://www.dc37.net/benefits/health/pdf/MELS_proof.pdf).

<sup>78</sup> *Id.* at 3 (noting that debt buyers responded to requests for the substantiation of debts in only 5.5% of cases).

<sup>79</sup> Defining Larger Participants of Certain Consumer Financial Product and Service Markets, 12 C.F.R. § 1090 (2012). *See also* Press Release, Consumer Fin. Prot. Bureau, Consumer Financial Protection Bureau to Oversee Debt Collectors (Oct. 24, 2012), *available at* <http://www.consumerfinance.gov/pressreleases/consumer-financial-protection-bureau-to-oversee-debt-collectors/>.

<sup>80</sup> *Shining a Light on the Consumer Debt Industry: Hearing Before the Subcomm. on Fin. Inst. and Consumer Protection of the S. Comm. on Banking, Housing, and Urban Affairs*, 113th Cong. (July 17, 2013) (statement of the Office of the Comptroller of the Currency, Appendix 1).

<sup>81</sup> A hearing led by Sen. Sherrod Brown was held on the question in a Senate subcommittee. Press Release, Sen. Sherrod Brown, Following Call to Rein In Debt Collection Industry, Brown Holds Hearing on Efforts to End Consumer Abuses (July 17, 2013), *available at* <http://www.brown.senate.gov/newsroom/press/release/following-call-to-rein-in-debt-collection-industry-brown-holds-hearing-on-efforts-to-end-consumer-abuses> ("Former bank employees have reported that they were instructed to '[g]o ahead and sign' affidavits verifying consumer debts, even when they didn't have documentation . . . [w]hen debt buyers purchase these loans from the biggest banks, they sign 'as is' contracts, giving banks cover to offload debts for collection that may be inaccurate, incomplete, or legally uncollectable. . . Today I hope to hear from the FTC . . . and the CFPB about how we can modernize debt collection oversight to better serve consumers."). Testimony at the hearing favored improvements in the provision of information involved in debt collection. *Statement of Corey Stone, supra* note 50, at 3

In 2010, a coalition of legal aid and community development organizations in New York City carried out one of the first studies of debt-buyer cases, titled *Debt Deception: How Debt Buyers Abuse the Legal System to Prey on Lower-Income New Yorkers*.<sup>82</sup> The *Debt Deception* study used a sample of 365 court cases, of which 336 had reached a final judgment.<sup>83</sup> The study found that 81% of the cases resulted in a default judgment, and 94% of cases overall resulted in judgment for the debt buyer.<sup>84</sup> Not a single consumer in this study was represented by an attorney, and not a single case in this study went to trial.<sup>85</sup> The cases were filed against people who lived overwhelmingly in poor and minority neighborhoods.<sup>86</sup> The study also noted that out of court settlements in court cases tended to be unsustainable payment plans, and that in the event of default, the debt buyer would be entitled to judgment in the full amount of the alleged debt.<sup>87</sup> The report recommended increased regulation, increased judicial scrutiny, and increased legal representation.<sup>88</sup>

A subsequent New York study published in 2013, *Debt Collection Racket*, provides insight into developments since the *Debt Deception* study.<sup>89</sup> Using statistics from New York state courts and the U.S. Census, *Debt Collection Racket* suggests that while the overall rate of default judgments in New York state

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(“[T]here is a surprising amount of consensus across all market participants – from debt collectors, creditors, and collection attorneys, to consumer advocates, legal services providers and state attorneys general that we must develop clear standards for data integrity and record keeping in the debt collection market.”). See also *Shining a Light on the Consumer Debt Industry: Hearing Before the Subcomm. on Fin. Inst. and Consumer Protection of the S. Comm. on Banking, Housing, and Urban Affairs*, 113th Cong. (July 17, 2013) (statement of Reilly Dolan, Acting Associate Director for the Division of Financial Practices at the Federal Trade Commission).

<sup>82</sup> WILNER & SHEFTEL-GOMES, *supra* note 37.

<sup>83</sup> *Id.* at 8.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.* at 10-12.

<sup>87</sup> *Id.* at 13.

<sup>88</sup> *Id.* at 16-17.

<sup>89</sup> SUSAN SHIN & CLAUDIA WILNER, NEW ECONOMY PROJECT, THE DEBT COLLECTION RACKET: HOW THE INDUSTRY VIOLATES DUE PROCESS AND PERPETUATES ECONOMIC INEQUALITY (Sarah Ludwig & Josh Zinner eds. 2013), *available at* <http://www.nedap.org/resources/documents/DebtCollectionRacketNY.pdf>.

may have fallen (by somewhere between 38% and 62% depending on location) between 2010 and 2013, the number of consumers represented by an attorney remains negligible at only 2%.<sup>90</sup> Through empirical analysis, the study also demonstrated racial and economic disparate impact.<sup>91</sup> The areas most affected are “clustered in predominantly middle-income black communities.”<sup>92</sup>

Mary Spector’s 2011 study reported on a detailed analysis of 507 cases filed in Dallas, Texas.<sup>93</sup> The cases were drawn from the Dallas Court-at-Law, which is one of three courts with concurrent jurisdiction over such cases in Dallas.<sup>94</sup> The Texas Study examined several of the same metrics which were examined in *Debt Deception* and which are examined in this study. Some of the findings from Texas differed from the findings of the *Debt Deception* study. Whereas *Debt Deception* showed a default rate of 81% in New York,<sup>95</sup> In the Texas sample, only about 40% of cases resulted in default judgment.<sup>96</sup> Further, the Texas study found that 50% were dismissed without prejudice.<sup>97</sup> Finally, the Texas study showed that in 12% of cases, debt buyers were unable to serve the defendant;<sup>98</sup> in nearly 23% of served cases the defendants appeared;<sup>99</sup> and that defendants were represented by a lawyer in almost 10% of served cases.<sup>100</sup>

Judith Fox’s 2012 study analyzed the activity of debt buyers in Indiana through a sample of 645 cases.<sup>101</sup> In Indiana, debt buyers often chose to avoid filing in small claims courts, even though they were well within the jurisdictional limit.<sup>102</sup> Indiana, like Maryland, changed its rules to increase the documentary requirements upon debt buyers filing collection cases, and this ap-

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<sup>90</sup> *Id.* at 5, 14.

<sup>91</sup> *Id.* at 4.

<sup>92</sup> *Id.*

<sup>93</sup> Mary Spector, *Debts, Defaults and Details: Exploring the Impact of Debt Collection Litigation on Consumers and the Courts*, 6 VA. L. & BUS. REV. 257, 274-77 (2011).

<sup>94</sup> *Id.* at 273.

<sup>95</sup> WILNER & SHEFTEL-GOMES, *supra* note 37, at 8.

<sup>96</sup> Spector, *supra* note 93, at 296.

<sup>97</sup> *Id.* at 296.

<sup>98</sup> *Id.* at 278.

<sup>99</sup> *Id.* at 288.

<sup>100</sup> *Id.* at 289.

<sup>101</sup> See Fox, *supra* note 12.

<sup>102</sup> *Id.* at 374-76.

peared to have temporarily suppressed filings.<sup>103</sup> Indiana also had high rates of non-appearance, with 83% of defendants failing to respond and only 2.5% not served.<sup>104</sup> Of those who responded to the complaint, most did not do so in the form required by court rules.<sup>105</sup> Debt buyers obtained default judgment in 73% of cases.<sup>106</sup> As in the *Debt Deception*, none of the cases examined resulted in a trial.<sup>107</sup>

One other study, somewhat different from the others, is important to the discussion. In her 1992 study of Baltimore City's rent court,<sup>108</sup> Barbara Bezdek observed many of the same phenomena as were observed in this study: special accommodation of plaintiff's representatives,<sup>109</sup> high rates of default,<sup>110</sup> and a general lack of evidentiary proof.<sup>111</sup>

Unlike previous studies, this study examines a large number of online court dockets from a statewide sample in a unified system comprised of twenty-six different counties. Maryland has a unified online trial court docket, and a search for any given party or attorney on the state courts' official "Maryland Judiciary Case Search" website returns results for all trial courts in the state, regardless of geography or jurisdictional amount.<sup>112</sup> Maryland Judiciary Case Search includes for each case the names of the parties, city, state, case number, trial date, and disposition.<sup>113</sup>

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<sup>103</sup> *Id.* at 373.

<sup>104</sup> *Id.* at 377. Note however that it was "assumed that service was perfected unless the file reflects otherwise." *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> *Id.* at 381.

<sup>107</sup> Note that a small number of cases went to trial in Spector's study: Spector, *supra* note 93, at 297, tbl.14 (discussing one case which resulted in a trial with judgment for the defendant, and showing the breakdown of outcomes generally).

<sup>108</sup> Barbara L. Bezdek, *Silence in Court: Participation and Subordination of Poor Tenants' Voices in Legal Process*, 20 HOFSTRA L. REV. 533 (1992). For a more recent examination of the plight of tenants, and continuing flaws in substantive and procedural law, see Mary Spector, *Tenant Stories: Obstacles and Challenges Facing Tenants Today*, 40 JOHN MARSHALL L. REV. 407 (2007).

<sup>109</sup> *Id.* at 551-53.

<sup>110</sup> Nearly 70% of cases resulted in complete success for the plaintiff landlord. *Id.* at 554.

<sup>111</sup> *Id.* at 562.

<sup>112</sup> See *Maryland Judiciary Case Search*, MARYLAND COURTS, <http://casesearch.courts.state.md.us/inquiry/processDisclaimer.jis>.

<sup>113</sup> *Id.*

This study was limited to cases filed in the District Court, which has exclusive original jurisdiction for cases under \$5,000, and concurrent jurisdiction with the Circuit Court for cases between \$5,000 and \$30,000. All cases studied also included the names of any attorneys and law firms, the amount sought in the complaint, and the amount of any judgment, plus separate itemizations for any fees, costs or interest added to the judgment. Unlike the federal PACER system or other state systems, the Maryland website does not provide access to actual case documents. Those have to be retrieved from the courthouse in which they were filed, with the exception of older cases outside the scope of this study, which are sent to a central repository in the state's capital.

## II. THE STUDY

### A. *Methodology*

With the aid of two teaching assistants and the students enrolled in the Consumer Protection Clinic at the University of Maryland Francis King Carey School of Law, we did a random sampling of 200 cases filed in 2009 and 200 cases filed in 2010 (400 cases total), filed by each of 11 debt buyer plaintiffs, resulting in a total sample size of 4,400.<sup>114</sup> The specific 11 debt buyers were selected because they constituted the highest volume filers in the state of Maryland.<sup>115</sup>

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<sup>114</sup> The debt buyers selected were: Pasadena Receivables, Inc.; Midland Funding LLC (also known as Midland Credit Management); Arrow Financial Services, LLC; LVNV Funding, LLC; Asset Acceptance, LLC; Portfolio Recovery Associates; Cavalry Portfolio Services, LLC; Advantage Assets II, INC; North Star Capital Acquisition; Fradkin & Weber, PA; Atlantic Credit & Finance, INC. A twelfth debt buyer, Equable Ascent Financial, LLC, also known as Hilco Receivables, was originally included in the list, but proved to have too few filings in 2009.

<sup>115</sup> All had filed over 1,000 cases in the 2009-2010 period. This proved to be a practical approach to identifying significant debt buyers: the highest volume filer for the subject time period was Pasadena Receivables, Inc. which filed 24,435 cases during 2009-2010. During the years 2011-2013, consolidation occurred in the industry. In 2012 the largest volume filers in Maryland were Pasadena Receivables (and its new alter-ego, Maryland Portfolios), Midland Funding, and Portfolio Recovery Associates. Pasadena is local and privately held, while Midland Funding and Portfolio Recovery are publicly traded and national, Figures from the first half of 2013 suggest that Pasadena will behind Asset Acceptance this year.

The years 2009 and 2010 were selected because they were the most recent years that had a high percentage of case outcomes that had reached a final disposition of judgment or dismissal. In contrast, many cases filed during 2011 had not yet reached an outcome at the time the data were gathered.<sup>116</sup> Finally, all cases studied were subject to the Maryland Affidavit Judgment Rules that existed prior to the implementation of new Rules on January 1, 2012.<sup>117</sup> While a companion study for cases filed after January 1, 2012 might yield insight into the efficacy of the new rules, such a comprehensive analysis is beyond the scope of this article.<sup>118</sup>

The data on each pre-selected debt buyer were gathered from Maryland Judiciary Case Search, pursuant to a protocol that insured that the cases were selected at random.<sup>119</sup> Maryland Judiciary Case Search provides free access to a limited amount of information on cases filed in Maryland courts, including the district courts which have exclusive original jurisdiction over “small claims” cases of under \$5,000.00 (typically credit card or medical debt), and which consequently deal with almost all debt buyer cases in Maryland.<sup>120</sup> The study data included information on filing and judgment dates, types of judgments, the amount of money sought and awarded, and a breakdown of amounts awarded in addition to the initial claim (i.e., costs, interest, and attorneys’ fees). Most importantly, the data also included information about

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<sup>116</sup> Examination of the data gathered has since shown that it takes a year or more from filing for some types of outcome to be reached. Had more recent cases been used, the results would have showed a distorted picture of the outcomes, with a disproportionately high number of affidavit judgments: affidavit judgments took an average of less than 150 days, while default judgments took almost 340 days on average and dismissals for lack of prosecution under MD. R. 3-507 took over 400 days.

<sup>117</sup> MD. R. 3-306.

<sup>118</sup> We did analyze a small sample of 100 cases filed after January 1, 2012, and those results are reported in Section II.C. Based on this smaller sample, there does not appear to be any significant change in rates of default judgments since the rules changes.

<sup>119</sup> See *Maryland Judiciary Case Search*, *supra* note 112.

<sup>120</sup> *But see* sources cited *supra* note 47, which suggest that the sale and enforcement of mortgage deficiency judgments is on the rise in Maryland and elsewhere. Case collection was limited to the District Courts because the Circuit Courts did not experience the same high volume of case filings. None of the 11 selected debt buyers filed more than 100 cases in the Circuit Court between 2009 and 2012. The volume of cases in Circuit Court was therefore insufficient for a large-scale study of the kind possible using District Court cases.

service of process, representation of the parties and the filing of defenses.<sup>121</sup> In addition, the data from this study were compared to the more limited data reported in the Maryland District Court's internal statistics used for tracking purposes,<sup>122</sup> as well as the official Maryland Judiciary Annual Statistics Report.<sup>123</sup>

### *B. Results*

#### 1. Amount Claimed in the Lawsuits Filed

The amount claimed in a lawsuit is a significant metric, because it can determine jurisdictional questions, whether pretrial discovery will be allowed, whether a jury trial will be allowed, and whether all of the formal rules of evidence will apply at trial. In Maryland, lawsuits in which the principal amount sought is \$5,000 or less (exclusive of costs, interest and attorneys' fees) are treated as "small claims," with less formality and fewer procedural safeguards. More broadly, the amount claimed is a significant metric because it reflects the financial impact of debt collection suits on communities and on the economy.

In the data sample of all 4,400 cases, 83% of the lawsuits claimed a principal amount of less than \$5,000.00, thus qualifying them as "small claims." This is significant because in practice, these "less than \$5,000" cases get treated as "small claims" in which few or no rules of evidence are applied and in which few if any procedural safeguards are observed. Put another way, in only 17% of the cases could a defendant even potentially have the right to the benefit of pretrial discovery, or of all the rules of evidence. Further, to be eligible to demand and obtain a jury trial, the principal amount claimed in the lawsuit must be more than \$15,000.

The average amount of principal claimed was \$2,993.73, according to the following distribution: 27% sought less than \$1,000; 56% sought between \$1,000 and \$5,000, and 17% sought more than \$5,000. The 17% of cases over the small claims limit

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<sup>121</sup> The complete protocol is contained in Appendix A, *infra*.

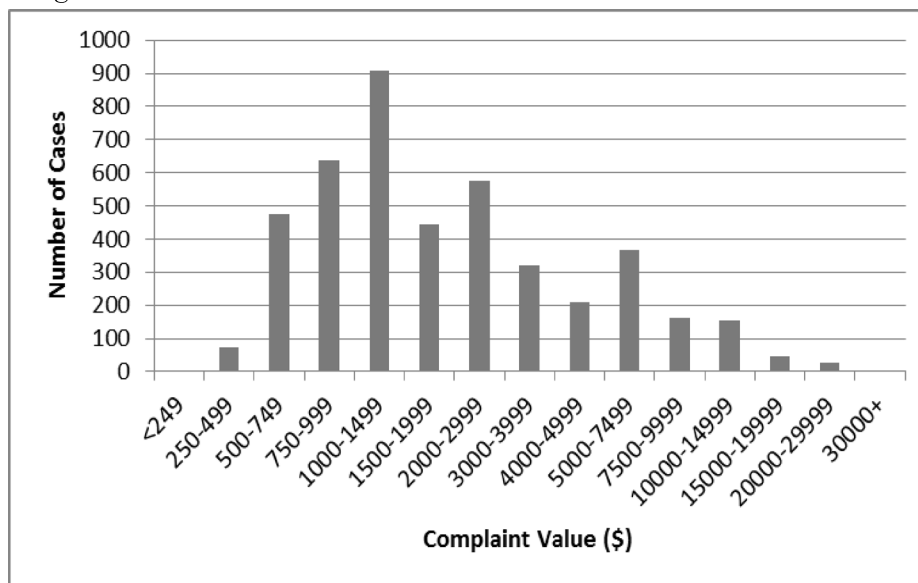
<sup>122</sup> *District Court of Maryland Statistics*, MARYLAND COURTS, <http://www.courts.state.md.us/district/about.html#stats>.

<sup>123</sup> The official annual report is less useful than the internal statistics. See *Annual Reports*, MARYLAND COURTS, <http://www.courts.state.md.us/publications/annualreports.html>

were distributed in a narrowing tail, up to \$30,000, as shown in Figure 1, below.

Notably, the 17% of cases in which the amount claimed was over \$5,000, thus entitling the defendant to pretrial discovery and the full range of the rules of evidence, did not experience significantly different outcomes from the cases below \$5,000 in which the defendant was not entitled to these added protections. This is not surprising when one considers that few consumers know their legal rights, let alone how to assert them.

Figure 1 - Amounts Demanded



The average principal amount sought in the total data sample of 4,400 cases was \$2,993.17. Of the 2,006 cases that resulted in judgment, the average amount sought in principal was \$2,967.58. In these 2,006 cases where judgment was entered, debt buyers were awarded 94.7% of the principal claimed in the lawsuit (\$2,811.66 out of \$2,967.58).

Although the average amount of the judgment principal was \$2,811.66, the average total amount awarded (including any pre-judgment interest, costs and attorneys' fees) was \$3,323.76. In other words, assuming that the consumer actually borrowed the full \$2,811.66 as principal (i.e. assuming it did not include any late fees, over limit fees or interest, which is almost never the

case), the data show that consumers got an average of \$512.10 (18.2%) tacked onto the judgment. The bulk of this amount was interest and attorneys' fees. "Costs" (which presumably include a private process server's fee) averaged only 11.6% (\$59.75) of the additional \$512.10. In terms of dollar value, prejudgment interest was the single largest amount added to a judgment. Prejudgment interest was added in 67% of the cases (1,347 out of 2,006) in which judgment was entered in favor of the debt buyer plaintiff. The average amount of prejudgment interest added in these 67% of cases won by the plaintiff was \$476. This is a significant figure, in that it amounts to almost 10% of the jurisdictional amount of \$5,000, when 83% of all cases were for an amount claimed of less than \$5,000. Finally, in 561 cases an average of \$474 was awarded for attorneys' fees. The bottom line is that debt buyers obtained judgment that was almost one fifth (18.2%) greater than the principal amount of the debt that they purchased for pennies on the dollar.

Pre-judgment interest and attorneys' fees are particularly significant because they should usually require proof greater than that required to prove a simple debt. If a plaintiff claims attorneys' fees or pre-judgment interest at a contractual rate, the plaintiff must prove that such amounts are provided for in the underlying contract.<sup>124</sup> Further, under the American Rule, attorneys' fees may be awarded only pursuant to a statute or contract, and they should not be awarded to law firms which are themselves debt buyers, or are owned by debt-buyers, because Maryland prohibits attorneys who act in their own interests from charging attorneys' fees.<sup>125</sup>

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<sup>124</sup> MD. R. 3-306(d)(1).

<sup>125</sup> See, e.g., *Weiner v. Swales*, 141 A.2d 749 (Md. 1958). The Financial Services division of the Attorney General's office has successfully pursued at least one debt buyer for violation of this rule. Settlement Agreement & Consent Order at ¶11(b), *Sunshine Financial Group, LLC*, Nos. CFR-FY2012-019 & CFR-FY2011-135 (Md. Collection Agency Licensing Bd. Sept 9, 2011), *available at* <http://www.dllr.state.md.us/finance/consumers/pdf/sunshinesettlement.pdf> (finding that *Sunshine* violated Maryland and Federal debt collection law by claiming attorney's fees not permitted in law). Since the *Sunshine* case, other firms in similar positions have stopped seeking attorneys' fees. Moreover, one of the compromises in the revised Rules was that, starting on January 1, 2012, a debt buyer who was seeking affidavit judgment at the time of filing the lawsuit need not produce the underlying contract if (1) it was not seeking pre-

## 2. How Consumers Respond to Debt Buyer Lawsuits

Previous studies have found that the overwhelming majority of consumers do not formally defend collection suits against them.<sup>126</sup> This study confirms that finding. Even when the figures were adjusted to remove those defendants who were not served with a complaint,<sup>127</sup> eighty-five percent of all consumers failed to file a defense in writing (known in Maryland as a “Notice of Intention to Defend”). The lack of consumer engagement in debt collection cases is an ongoing problem that escapes resolution. At the June 2013 joint Federal Trade Commission/Consumer Financial Protection Bureau workshop titled “The Life of a Debt” much was made of this problem, but no solutions were offered.<sup>128</sup>

Figure 2 demonstrates that: (1) 85% of the 2,947 consumers served with a complaint did not file a written response; (2) 13% filed a response by themselves; and (3) 2% had a lawyer at the time of or after a response was filed.

Figure 2 – How Consumers Respond to Suits

	Everyone		People Who were Served	
	N	%	N	%
Represented by Lawyer	52	1%	52	2%
Responded Pro Se	397	9%	397	13%
Did Not Respond	3951	90%	2498	85%
<i>Total</i>	<i>4400</i>	<i>100%</i>	<i>2947</i>	<i>100%</i>

The finding that only 2% of the people had a lawyer is consistent with the findings of other studies.<sup>129</sup> On closer exami-

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judgment interest in excess of 6%; and (2) it was not seeking attorneys’ fees. The practical result has been that since January 1, 2012, debt buyers in Maryland always seek 6% prejudgment interest, and they never seek attorneys’ fees and they do not attach the underlying contract. *See* MD. R. 3-306.

<sup>126</sup> *See supra* Part I.E.

<sup>127</sup> Because the study relied on electronic court records, it was not possible to determine if actual service took place in all of these cases. Defective or “sewer” service may still be depressing the response rate of consumer defendants.

<sup>128</sup> *See Life of a Debt, supra* note 32.

<sup>129</sup> *See supra* Part I.E.

nation, the number of consumers actually *defended in the lawsuit* by a lawyer is likely to be even smaller: in 5 of the 52 cases where the defendant had a lawyer, the defendant declared bankruptcy. The attorney whose name appears on the record may therefore simply have been acting in relation to the bankruptcy, rather than actively defending the case. A Notice of Intention to Defend was filed in only one of these five cases, and in a different case the attorney appears to have assisted the defendant in challenging a post-judgment garnishment, but the lawyer did not defend the underlying lawsuit.

### 3. Bankruptcies

Figure 3 shows bankruptcies filed by defendants and the amounts sought in the complaint. Defendants declared bankruptcy in 261 of 4,400 cases.<sup>130</sup> An attorney appearance was filed in only 5 of these 261 cases. Consumers filed for bankruptcy even though no money judgment was entered in about 56% of the cases, and in the remaining 44%, when a money judgment had been entered.<sup>131</sup> With an average amount claimed of \$4,450, bankruptcy cases were significantly larger (almost 50% higher) than the average of \$2,993.73 claimed overall.<sup>132</sup>

Figure 3 – Bankruptcies Observed

<b>Bankruptcies</b>	<b>N</b>	<b>%</b>	<b>Total Complaints</b>	<b>Average Complaint</b>
Notice Filed Pre Judgment	147	56%	\$ 680,988.84	\$ 4,632.58
Notice Filed Post Judgment	114	44%	\$ 480,680.88	\$ 4,216.50
<i>Total</i>	<i>261</i>	<i>100%</i>	<i>\$ 1,161,669.72</i>	<i>\$ 4,450.84</i>

<sup>130</sup> Case Search records Bankruptcy as a case status rather than as a case outcome – therefore bankruptcies out of the total sample, rather than cases with a final outcome.

<sup>131</sup> The distinction of presence vs. absence of a money judgment was made because the actual dates of the bankruptcy filing were not a part of the data which gathered pursuant to the protocol.

<sup>132</sup> See *infra* Figure 3.

#### 4. Unrepresented Consumers Fare Poorly

As a preliminary matter, it is important to note that 925 of the 4,400 cases sampled were dismissed when the defendant was never served. In 702 of these cases, the court record reflects that the dismissal was due to lack of prosecution or lack of jurisdiction. In other words, according to the data sample, 24% of all cases filed were never served. While no firm conclusions can be drawn from the fact that 24% of cases were never served, three possibilities seem likely: (1) a large number of defendants settled prior to the law suit getting served, which obviated the need for service; (2) debt buyer documentation is so stale that they cannot obtain accurate current location information on defendants; or (3) the debt buyer business model is structured such that it is not profitable to invest resources into locating current addresses for defendants.

Of the 2,947 cases that were served and reached final outcome, 2,498 people (85% of the total) did not file a response; 397 people (13%) filed a *pro se* response; and 52 people (2%) had a lawyer who entered an appearance in the case.

Of the 2,947 cases that were served and reached final outcome, 2,006 (68%) resulted in a money judgment against the defendant, in an average amount of \$3,323.76. Yet, only 9 (0.4%) of the judgments were the result of a trial. Outcomes varied depending on whether the person (1) filed no response; (2) filed a response; or (3) had a lawyer who entered an appearance in the case.

Defendants who filed no response had the worst outcomes. Of the 85% of people who did not file a response, debt buyers obtained a judgment by affidavit, consent, default, or trial 73% of the time, and recovered 82% of the amount sought in the complaints.

Defendants who filed a response had better outcomes than those who did not file a response, but the outcomes were poor overall. Of the 13% of defendants who proceeded *pro se* (by filing a response called a Notice of Intention to Defend), debt buyers obtained judgment by affidavit, consent, default, or trial 47% of the time, and recovered 62% of the amount sought in the complaints.

Defendants who had a lawyer fared best. Of the 2% of de-

defendants who had a lawyer enter an appearance in the case, debt buyers obtained an affidavit, consent, or default judgment only 15% of the time, and recovered only 21% of the principal amount sought in the complaints.<sup>133</sup> However defendants were represented by a lawyer in only 52 cases, and it is clear that different lawyers provided different levels of service, rendering this data not statistically significant enough to be a reliable measurement. Nevertheless, data from outside of this study confirms what is widely believed: lawyers make a difference. A 2013 unpublished study of the Maryland's Pro Bono Resource Committee's Consumer Protection Project found that of 80 cases in which pro bono attorneys represented defendants in collection suits by debt buyers, debt buyers obtained final money judgments in only 12 cases (15%). Overwhelmingly, defendants with an attorney succeeded in having the case dismissed.<sup>134</sup>

Figure 4 - Outcomes by Representation

Outcome	No Notice to Defend Filed		Notice Filed		Attorney	
	<i>n</i>	%	<i>n</i>	%	<i>n</i>	%
Money Judgment	1812	73%	186	47%	8	15%
% of Total Complaint Amounts awarded		82%		62%		21%

<sup>133</sup> The fact that there were affidavit and default judgments when there was an attorney of record suggests that the attorney involvement commenced only after judgment was entered, but the data is not conclusive.

<sup>134</sup> Study on file with the author.

Figure 5 – Detailed Outcomes by Representation Status

Outcome	No Notice to Defend Filed		Notice Filed		Attorney		Total	
	<i>n</i>	%	<i>n</i>	%	<i>n</i>	%	<i>n</i>	%
Affidavit Judgment <sup>135</sup>	1518	61%	96	24%	6	12%	1620	55%
Consent Judgment for P <sup>136</sup>	231	9%	61	15%	2	4%	294	10%
Default Judgment for P <sup>137</sup>	61	2%	22	6%	0	0%	83	3%
Dismissed by Court	149	6%	66	17%	11	21%	226	8%
Rule 3-506 Dismissal <sup>138</sup>	293	12%	69	17%	17	33%	379	13%

<sup>135</sup> See MD. R. 3-306. To seek affidavit judgment the plaintiff must demand it and file an affidavit to support it at the time of filing the complaint. MD. R. 3-506(b). If the defendant fails to file a Notice of Intention to Defend (“NOID”), the court may grant judgment without a trial, provided the affidavit is sufficient. MD. R. 3-306(e)(2)(A). When the defendant files a NOID, but fails to appear at trial, it appears that some clerks record the resulting judgment as an affidavit judgment, hence the presence of 96 affidavit judgments among defendants who filed NOIDs.

<sup>136</sup> A consent judgment may be entered at any time. MD. R. 3-612. However, consent judgments may represent enforcement of the terms of settlements, allowed by Rule 3-506(b).

<sup>137</sup> A default judgment may be entered in two situations: where affidavit judgment is denied, but on the trial date the defendant fails to appear; where a NOID is filed but the defendant fails to appear. MD. R. 3-509. One anomalous default judgment was entered where the plaintiff failed to appear at a hearing.

<sup>138</sup> A form of voluntary dismissal where the plaintiff can dismiss without the court’s permission provided no counterclaim has been made, and notice is given to the parties and the court. MD. R. 3-506(a). The analysis of the specific reason or reasons that cases were dismissed is limited, because the data in Case Search often does not specify whether the dismissal was due to a voluntary settlement (pursuant to Rule 3-506(b)) or to any other of several factors listed in Rule 3-506, or even factors which are not listed in Rule 3-506. One such factor may be that debt buyers have been known to settle or dismiss as soon as they become aware that a case might be contested. Similarly, collection phone calls and letters do not stop just because a lawsuit was filed. In fact, it seems axiomatic that people who are served with a lawsuit are more likely to make a settlement than those who have not. This is another area that warrants study, but

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Rule 3-506(B) Dismissal upon stipulated terms <sup>139</sup>	164	7%	58	15%	7	13%	229	8%
Rule 3-507 Dismissal <sup>140</sup>	78	3%	14	4%	2	4%	94	3%
Trial Judgment for P	2	0%	7	2%	0	0%	9	0%
Trial Judgment for D	2	0%	3	1%	7	13%	12	0%
Default Judgment for D	0	0%	1	0%	0	0%	1	0%
Total	2498	100%	397	100%	52	100%	2947	100%

### 5. Settlement

Settlements between debt buyers and unrepresented defendants<sup>141</sup> are fairly common. Of the 2,498 people who were served and did not file a Notice of Intention to Defend, 395 (16%) settled. Some of these settlements (164, 42%) were recorded as Rule 3-506(b) dismissals, so their terms are unknown. The remaining 231 (58%) were consent judgments, the terms of which are known. Most of consent judgments (183, or 79%) were for the amount demanded in the complaint. The forty-eight defendants (21%) who settled for a reduced amount achieved an average reduction of 19%. However, outcomes were not evenly distributed:

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which is beyond the scope of this article.

<sup>139</sup> A dismissal based upon a settlement. The case may be reinstated in order to “enforce the stipulated terms.” MD. R. 3-506(b). A dismissal on stipulated terms may therefore become a consent judgment if the terms are not kept.

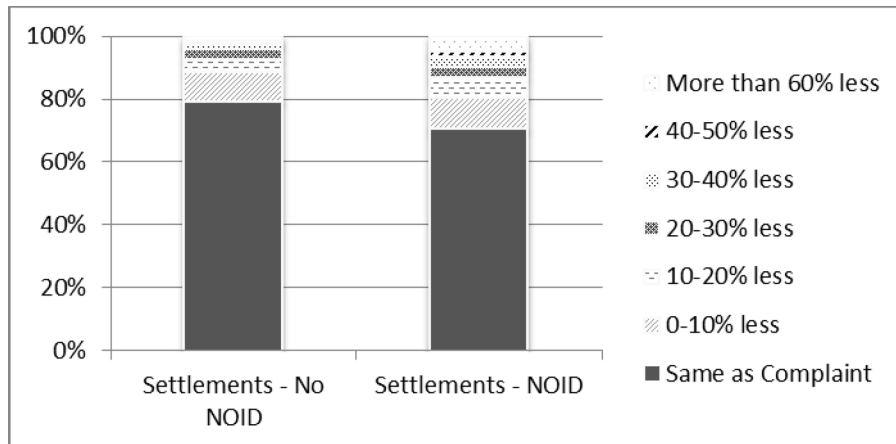
<sup>140</sup> A lawsuit is subject to dismissal by the court if the complaint has not been served for more than a year, or if there have been no docket entries for one year. MD. R. 3-507.

<sup>141</sup> In this context, “unrepresented” is used to designate those people who did not have a lawyer, and who did not file a Notice of Intention to Defend. “Self-represented” is used to designate people who did not have a lawyer, but who did file a Notice of Intent to Defend.

twenty-two (10%) achieved a reduction of less than 10%, while four achieved reductions of over 50%. These results suggest that even the few defendants who do settle their cases with plaintiffs do not usually benefit much from the resulting settlement. A very small group was successful in achieving a significant reduction in the alleged debt, but most are no better off than if they had simply waited for affidavit judgment.

Self-represented defendants (i.e. those who filed a Notice of Intent to Defend) fared little better. More of them settled: 119 out of 397 (30%) as opposed to 16% of the unrepresented. Of these settlements, sixty-one (51%) were consent judgments. Most of these consent judgments (forty-three, 69%) were for the same amount as the complaint. Where the judgment was for less than the amount in the complaint, it was reduced by an average of 23%. Again, however, only a small number of defendants benefited the most, as shown in Figure 6, below.

Figure 6 - Consent Judgments<sup>142</sup>



## 6. Trends in Debt buyer Activity

In addition to the cases from 2009 and 2010 which are studied above in detail, the total number of lawsuits filed in Maryland by the subject debt buyers was calculated for the period

<sup>142</sup> Here, “No NOID” denotes people who were unrepresented (i.e. the people who did not have a lawyer and who did not file a Notice of Intent to Defend). “NOID” represents people who did not have a lawyer, but who did file a Notice of Intent to Defend.

from January 1, 2011 through December 31, 2013. In Maryland, debt buyers filed more than 37,000 cases in 2011, more than 22,000 cases in 2012, and more than 24,000 cases in 2013.<sup>143</sup> Thus, as calculated in Figure 7, the total number of filings in Maryland by the subject debt buyers during each year from 2009 through 2013 was as follows: 40,796 in 2009; 43,581 in 2010; 37,202 in 2011; 22,566 in 2012; and 24,317 in 2013. It is clear that filings hit their peak in 2010, their low point in 2012, and perhaps began to rebound in 2013. It is unclear – and worthy of further study to determine - whether the dramatic decline in filings is due to market forces, to regulatory action, to the 2012 changes to the Maryland Rules, or some other factor or combination of factors. It is also unclear whether the pattern in Maryland is reflected in other states.

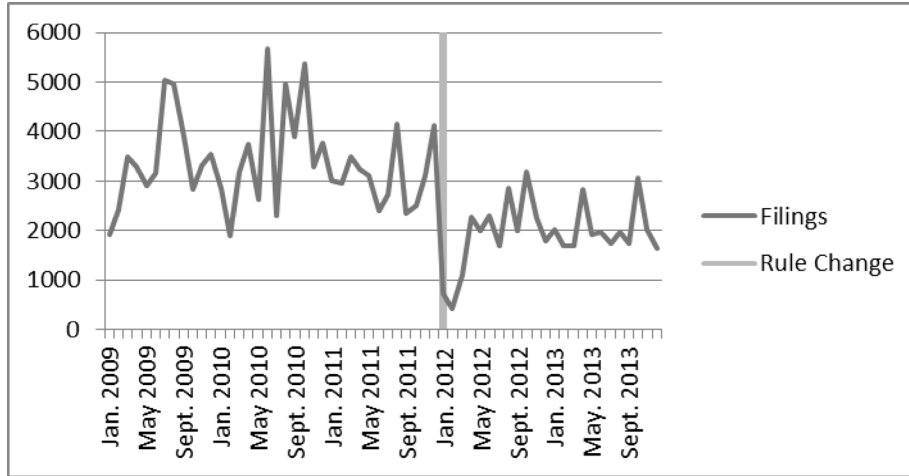
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<sup>143</sup> There is an additional group of debt buyers who were either nonexistent or not as active in 2009-2010 as they were after that time frame. Adding the gross number of filings of this new group raises the total filings in 2011 to 37,202; in 2012 to 22,566; and in 2013 to 24,317. This new group consists of the following entities: Credit Acceptance, Osiris Holdings, Unifund CCR, Razor Capital, and Maryland Portfolios.

Figure 7 – Number of Cases & Market Share of Debt Buyers,  
2009-2012

Debt Buyer	Years										Totals
	2009	%	2010	%	2011	%	2012	%	2013	%	
Advantage Assets, II, INC	462	1%	1685	4%	144	0%	0	0%	1	0%	<b>2291</b>
Arrow Financial Services, LLC	5376	13%	2321	5%	75	0%	1	0%	1	0%	<b>7773</b>
Asset Acceptance, LLC	2978	7%	3770	9%	1154	3%	492	2%	2208	9%	<b>8394</b>
Atlantic Credit & Finance, INC	1712	4%	979	2%	97	0%	2	0%	14	0%	<b>2790</b>
CACH	2701	7%	2146	5%	817	2%	210	1%	1093	4%	<b>5874</b>
Cavalry Portfolio Services, LLC	990	2%	1223	3%	1791	5%	354	2%	1602	7%	<b>4358</b>
Commercion	0	0%	0	0%	0	0%	45	0%	1	0%	<b>45</b>
Credit Acceptance	824	2%	1013	2%	3234	9%	1399	6%	1531	6%	<b>6470</b>
Equable Ascent	50	0%	1612	4%	3539	10%	250	1%	145	1%	<b>5451</b>
Fortis Capital	57	0%	38	0%	31	0%	0	0%	0	0%	<b>126</b>
Fradkin & Weber, PA	249	1%	3748	9%	102	0%	20	0%	3	0%	<b>4119</b>
LVNV Funding, LLC	2756	7%	4445	10%	5205	14%	0	0%	5	0%	<b>12406</b>
Midland Funding, LLC	5546	14%	4839	11%	14242	38%	10786	48%	9619	40%	<b>35413</b>
North Star Capital Acquisition	1155	3%	540	1%	64	0%	1	0%	1	0%	<b>1760</b>
Osiris Holdings	0	0%	84	0%	404	1%	31	0%	208	1%	<b>519</b>
Palisades Collection LLC	345	1%	520	1%	101	0%	21	0%	9	0%	<b>987</b>
Pasadena Receivables, INC	13570	33%	10865	25%	3688	10%	2122	9%	1085	4%	<b>30245</b>
Portfolio Recovery Associates	1608	4%	2651	6%	2189	6%	6328	28%	6608	27%	<b>12776</b>
Razor	0	0%	128	0%	40	0%	314	1%	103	0%	<b>482</b>
Sherman	20	0%	0	0%	0	0%	4	0%	0	0%	<b>24</b>
Sunshine Financial Group, LLC	36	0%	822	2%	231	1%	4	0%	0	0%	<b>1093</b>
Unifund	361	1%	152	0%	54	0%	182	1%	80	0%	<b>749</b>
<b>TOTALS</b>	<b>40796</b>		<b>43581</b>		<b>37202</b>		<b>22566</b>		<b>24317</b>		<b>168,462</b>
<b>MONTHLY AVERAGE</b>	<b>3399.67</b>		<b>3631.75</b>		<b>3100.17</b>		<b>1880.50</b>		<b>2026.42</b>		

Figure 8 - Total Debt Buyer Filings in Maryland District Courts, Jan. 1, 2009 to December 31, 2013



Polls by InsideARM, a debt-collection trade publication, show that despite the overall trend that Figure 8 appears to show, the purchase and sale of junk debt is a continuing feature of the debt collection industry.<sup>144</sup> Given the number of private class actions and public enforcement actions by the state of Maryland against prominent debt buyers in Maryland, the decline in the volume of lawsuits may also reflect a decision to increase collections through non-litigation means such as letters and phone calls.<sup>145</sup> There are, however, no signs that the debt buying industry is disappearing or that the problems identified by the Rules Committee have been solved. The filing of tens of thousands of debt buyer lawsuits continues to be a significant load on Maryland's courts and consumers.

<sup>144</sup> In Summer 2011, the last period for which InsideARM has published figures, 37.2% of original creditors were increasing their use of debt collection agencies or debt buyers while 22.9% were maintaining the same level of usage. *The ARM Barometer: Creditor Results*, INSIDEARM.COM, (Summer 2011), <http://www.insidearm.com/features/arm-barometer/summer-2011/creditor-results/>. Most debt buyers reported an increase in activity in the same period: 42.9% moderate, 14.3% large. *The ARM Barometer: Debt Buyer Results*, InsideARM.com, (Summer 2011), <http://www.insidearm.com/features/arm-barometer/summer-2011/results-debt-buyers/>.

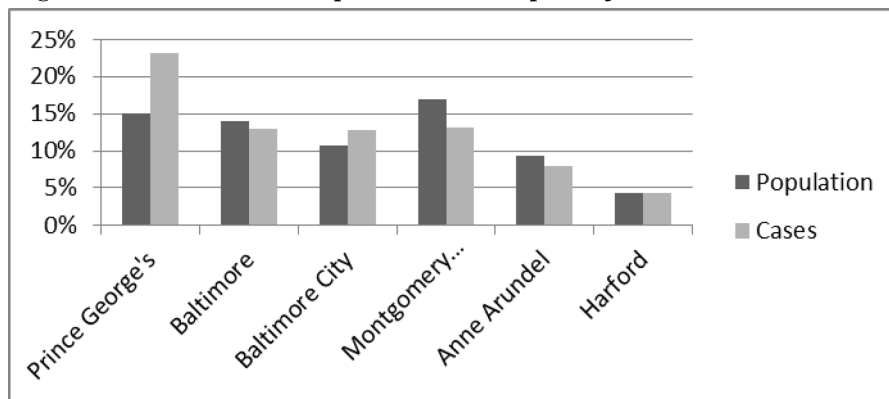
<sup>145</sup> While the shift from litigation to non-litigation based collection would be an interesting subject for further study, it is a difficult area to research empirically, because non-litigation based collection does not leave the same type of broad paper trail in the public records.

While some debt buyers have stopped filing collection cases in Maryland, others have increased their filings. Encore Capital Group (parent of Midland Funding, LLC) purchased Asset Acceptance, Inc. in mid-2013, leaving only three major players in Maryland, where there were once more than ten.<sup>146</sup>

### 7. Geographic Concentration of Cases

Debt buyers sued disproportionately in jurisdictions with larger concentrations of poor people and racial minorities. For example, Prince George's County has only 15% of the Maryland's population, yet 23% of all debt buyer complaints were filed against Prince George's County residents.<sup>147</sup> A disparity also exists in Baltimore City, as illustrated in the Figure 9 below.

Figure 9 – Cases and Population in Top Six Jurisdiction



As Figure 9 shows, based on filing rates and population estimates for 2010,<sup>148</sup> Prince George's County and Baltimore City have a greater proportion of debt buyer cases than that of the general population. In contrast, Baltimore, Montgomery and Anne Arundel Coun-

<sup>146</sup> See *supra* Figure 7, showing the market share of various debt buyers in Maryland.

<sup>147</sup> See *infra* Figure 9.

<sup>148</sup> Population figures from the 2010 United States Census, compiled by the Maryland Department of Planning. MD. DEPT. PLANNING, 2000-2010 INTERCENSAL ESTIMATES BY GENDER, RACE & ORIGIN (2012) [hereinafter INTERCENSAL ESTIMATES], available at [http://www.mdp.state.md.us/msdc/IntercensalEst00\\_10/MDEst\\_2000to2010\\_byRace&Origin.xls](http://www.mdp.state.md.us/msdc/IntercensalEst00_10/MDEst_2000to2010_byRace&Origin.xls).

ties have fewer cases based on population, while Harford seems to be evenly balanced.

The differences between these areas can be better shown by comparing some of their basic demographics. As Figure 10 shows, there is no straightforward connection between either median income or race, and disparities in the filing rate in these jurisdictions. Baltimore City households have nearly half the median income of Maryland, and Baltimore City is a “majority-minority” jurisdiction, but its case-to-population disparity is only 2% (i.e. Baltimore City’s share of cases was 2% more than its share of Maryland’s population). Prince George’s County has a nonwhite population 5% higher than Baltimore City, and slightly above average income, but its case-to-population disparity is 8%. Baltimore County, with a slightly lower than median income and a slightly higher nonwhite population fared similarly to Anne Arundel County, which has significantly higher income and lower nonwhite population.

Figure 10 – Comparison of High Filing Jurisdictions

County	Median Income <sup>149</sup>		Race <sup>150</sup>		Population		
	Income	Difference from State Median	Non-White	Difference from State %	People <sup>151</sup>	Cases	Disparity <sup>152</sup>
Prince George's County	\$72,178	1%	74%	35%	863420	1020	8%
Baltimore County	\$64,814	-9%	34%	-5%	805029	569	-1%
Baltimore City	\$39,561	-45%	69%	30%	620961	565	2%
Montgomery County	\$94,358	32%	36%	-3%	971777	580	-4%
Anne Arundel County	\$84,409	18%	22%	-16%	537656	347	-1%
Harford County	\$78,648	10%	18%	-21%	244826	186	0%
Maryland	\$71,294	—	39%	—	5773552	4400	—

However, the general trends in this comparison suggest that race and wealth make a difference: the counties with the fewest proportionate share of lawsuits are richer and less diverse

<sup>149</sup> Median Income figures are from the American Communities Survey (ACS), 3 year estimates for 2009-2011. MD. DEPT. PLANNING, MEDIAN HOUSEHOLD INCOME IN MARYLAND'S JURISDICTIONS (THREE YEAR ACS DATA) 2009-2011, available at [http://www.mdp.state.md.us/msdc/HH\\_Income/ACS\\_3yr\\_Household\\_Median\\_Income\\_2011.xls](http://www.mdp.state.md.us/msdc/HH_Income/ACS_3yr_Household_Median_Income_2011.xls). Disparity figures are the percentage deviation from the median income for Maryland.

<sup>150</sup> From the 2010 United States Census, compiled by the Maryland Department of Planning. INTERCENSAL ESTIMATES, *supra* note 148.

<sup>151</sup> *Id.*

<sup>152</sup> "Disparity" represents the difference between each jurisdiction's proportion of Maryland's population and that jurisdiction's proportion of the sampled cases. For example, Prince George's County has 15% of the Maryland's population but had 23% of the sampled cases, so the disparity between cases and population is 8%: Prince George's County had 8% more cases than the size of its population indicates it should.

than Maryland as a whole.

An analysis based on zip codes or census tracts would enable a more detailed comparison of case data with census data. Alternatively, further study specifically dedicated to the disparate impact of debt collection suits would go a long way towards determining whether debt-buyer suits disproportionately affect particular groups.

### *C. Follow-Up*

As noted above, the rules governing affidavit judgments in Maryland changed on January 1, 2012.<sup>153</sup> In order to explore the immediate effects of these changes, a sample size of 100 cases filed after January 1, 2012, was analyzed using the same protocol as for the original study.<sup>154</sup>

Of the 100 follow-up cases gathered, 83 resulted in a final outcome, of which 55 (66%) were judgments against the Defendant. Analysis of this limited sample suggests limited changes following the introduction of the new rules.

First, the new sample had a larger dollar value on average, while the amount of the judgment was smaller on average. Specifically, while the original sample had an average complaint amount of \$2,993, in the follow-up it was \$3,248. In the original sample, the average total judgment was \$3,323, but in the follow-up it was \$2,594. Part of this change may be accounted for by a substantial drop in awards of interest and attorneys' fees, which is a direct result of the new Rule 3-306. Pre-judgment interest was awarded in 67% of judgments in the original sample, but only 25% in the follow up sample, while awards of attorneys' fees dropped from 28% in the original sample to 13% in the follow-up sample.

Second, the follow-up shows an *increase* in the proportion of affidavit judgments, from 55% of served cases with outcomes from the original sample, to 63% of similar cases in the follow up

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<sup>153</sup> See *supra* note 71 and accompanying text.

<sup>154</sup> Due to the consolidation that has occurred in the industry, only 5 of the original debt buyers had sufficient numerous filings to sample in 2012: Pasadena Receivables, Midland Funding, Cavalry Portfolio, Asset Acceptance and Portfolio Recovery Associates. The cutoff date for gathering data for this sample was November 15, 2013.

sample.<sup>155</sup> This is somewhat puzzling, given the increased requirements of the new rules. It is possible that the result is an artifact of other changes and not a real increase in the frequency of default judgments. Likewise, it could mean that the cases filed under the new rules are of a better quality. The increase corresponded with a drop in Rule 3-507 dismissals. The proportion of cases “active” was also higher in the follow-up than in the original sample. This suggests that some cases in the follow-up will be dismissed eventually. At the time of sampling, there were simply too many possible influences on the affidavit judgments to draw firm conclusions regarding the impact of the new rules.

Third, more defendants defended themselves in the follow-up: 24% of defendants who were served filed a Notice of Intention to Defend in the follow-up, compared with only 15% in the original sample. It is, however, difficult to relate this development to the new affidavit judgment rule. The increased filings of Notices of Intent to Defend may be a result of generally increased awareness about the flaws of debt buyer lawsuits, or the fact that there is now a formal pro bono legal assistance program in effect to defend debt buyer lawsuits, or due to other factors.

Finally, several metrics showed no significant change in the follow-up: the rate of service, geographical distribution of cases, attorney representation<sup>156</sup> and proportion of bankruptcy filings.

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<sup>155</sup> The proportion of cases served was the same in both samples: 76%.

<sup>156</sup> Because representation is so rare, as shown by the original sample, a larger follow-up would be required to state with any certainty that attorney representation was unchanged. In addition to the nascent emergence of a formal pro bono representation program in debt buyer cases, the District Court in partnership with the Maryland Legal Aid Bureau has also created and rapidly expanded a “Self-Help Center” that has provided assistance to literally tens of thousands of *pro se* litigants, many of whom are defending debt buyer lawsuits. A 2012 University of Maryland study of the Self-Help Center concluded that “There was also evidence, drawn from analyses of case event data obtained from the Judiciary’s management information system, suggesting that cases involving clients of the Center, when compared with cases involving self-represented litigants who did not receive Center services, showed greater understanding and engagement of litigants about the case, and improved chances for judgments being based on merits and rights, rather than default.” *Evaluation of the Glen Burnie District Court Self-Help Center*, UNIV. OF MD. INST. FOR GOVERNMENTAL SERV. AND RESEARCH, [http://www.igrs.umd.edu/applied\\_research/displaymedia.php?mediaID=26](http://www.igrs.umd.edu/applied_research/displaymedia.php?mediaID=26) (last updated Feb. 18, 2014).

### III. ANALYSIS

The following three sections contain an analysis of the findings described in Part II. Section A describes the implications for providing legal assistance or representation to consumers sued by debt buyers. Section B compares the findings of this study with those of four other studies.

#### A. *The Importance of Representation*

Figure 5 shows that consumers sued by a debt buyer have the worst outcomes when they do nothing and the best outcomes when they are represented by an attorney. When consumers did nothing, the cases against them were dismissed about 20% of the time. In contrast, the less than 2% of defendants who had a lawyer achieved a dismissal rate of about 70%.

Although Maryland has over 30,000 lawyers (22,500 of whom are in private practice),<sup>157</sup> in 2009-2010, only thirty-eight attorneys represented consumers in a total of fifty-two of the 4,400 cases sampled.

Extensive state funding for the representation of such defendants is unlikely under current budgetary conditions. Avenues for improving representation and access to justice have been explored by the Maryland Access to Justice Commission including fee shifting,<sup>158</sup> the implementation of a right to counsel in civil cases,<sup>159</sup> and unbundled legal assistance for self-represented litigants.<sup>160</sup>

A recent study by James Greiner and Cassandra Patta-

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<sup>157</sup> The ABA estimates 23,000 lawyers were practicing in Maryland as of 2013, and about 75% of these were in private practice. MKT. RESEARCH DEP'T, AM. BAR ASS'N, NATIONAL LAWYER POPULATION BY STATE (2013), *available at* [http://www.americanbar.org/content/dam/aba/migrated/marketresearch/PublicDocuments/2013\\_natl\\_lawyer\\_by\\_state.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/marketresearch/PublicDocuments/2013_natl_lawyer_by_state.authcheckdam.pdf).

<sup>158</sup> Md. Access to Justice Comm'n, *Fee Shifting to Promote the Public Interest in Maryland*, 42 U. BALT. L.F. 38 (2011). The Commission's proposals focused on one-way fee shifting to support plaintiffs in civil rights and similar cases, however, the resulting bill was unsuccessful in the legislature. MD. ACCESS TO JUSTICE COMM'N, ANNUAL REPORT 2012, 9-10 (2012) [hereinafter MD. ACCESS TO JUSTICE REPORT], *available at* <http://www.courts.state.md.us/mdatjc/pdfs/annualreport2012.pdf>.

<sup>159</sup> MD. ACCESS TO JUSTICE REPORT, *supra* note 158, at 10.

<sup>160</sup> *Id.* at 1-4.

nayak examines the impact of representing people pro bono.<sup>161</sup> Although it was not the main purpose of this study to explore this question, some of the results of this study are relevant to that debate. The proceedings of the District Courts of Maryland are very different from the subject-specific proceedings that the Greiner study examined, and as the authors noted, the nature of both the subject matter and the forum may mean that their results are not generally applicable.<sup>162</sup> Reflecting on that study, Jeff Selbin and several colleagues have suggested that more attention should be paid to where and at what point in the process limited legal assistance resources should be tapped.<sup>163</sup> The instant study clearly shows that consumer defendants had better outcomes when a lawyer appeared in their case. However, the primary purpose of this study is not to demonstrate the value of representation, but rather to demonstrate what occurs in its absence.

As noted in Part II.B.5 above, the data regarding settlements suggests that in many cases, defendants who settle are as badly off as those who are subjected to judgments. The problem of settlements arose at the FTC/CFPB roundtable on “The Life Cycle Of A Debt.” Thomas Lawrie, a Maryland Assistant Attorney General made the point that contact between debt-collecting attorneys and unrepresented defendants provides collecting attorneys with an opportunity to push defendants to settle on terms they do not understand and cannot afford.<sup>164</sup> Unsustainable set-

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<sup>161</sup> D. James Greiner & Cassandra Wolos Pattanayak, *Randomized Evaluation in Legal Assistance: What Difference Does Representation (Offer and Actual Use) Make?*, 121 YALE L.J. 2118 (2012).

<sup>162</sup> Greiner and Pattanayak used the Harvard Legal Aid Bureau’s work in unemployment insurance cases. In explaining their results, the authors thought that self-representation may have been easier in this particular type of case, and that the administrative law judges hearing the cases may have compensated for the disadvantages of self-representation. *Id.* at 2150-51.

<sup>163</sup> Jeffrey Selbin, Jeanne Charn, Anthony Alfieri & Stephen Wizner, *Service Delivery, Resource Allocation, and Access to Justice: Greiner and Pattanayak and the Research Imperative*, 122 YALE L.J. ONLINE 45 (2012), <http://www.yalelawjournal.org/images/pdfs/1099.pdf>. A study addressing this question is currently under way led by Dalié Jiménez and James Greiner. Dalié Jiménez, D. James Greiner, Lois R. Lupica & Rebecca L. Sandefur, *Improving the Lives of Individuals in Financial Distress Using a Randomized Control Trial: A Research and Clinical Approach*, 20 GEO. J. ON POVERTY L. & POL’Y 449 (2013).

<sup>164</sup> Patrick Lunsford, *ARM Data Exchange Standards Focus of FTC/CFPB Collection Roundtable*, INSIDEARM.COM, (June 7, 2013),

tlements are likely to merely delay, rather than prevent, judgments. Further study would be required to determine exactly what terms defendants in these cases generally receive, whether they understand the terms of their settlements, and whether they are in fact able to fulfill those terms. One obvious solution would be to have a standard form settlement agreement that is realistic and fair, and which provides that an alleged breach of the agreement should be met with a motion to enforce the terms of the settlement, rather than a default judgment in the full amount sued for.

### *B. Comparison with Other Studies*

Figure 11, below, sets out three key metrics gathered in this and previous studies of debt buyer cases: (1) the percentage of defendants who did not respond to the debt collection complaint; (2) the percentage of defendants who were represented; and (3) the percentage of cases which resulted in judgments against defendants, together with the sample size and years in which the data were gathered.

The results show some clear trends, but also large disparities. Some of these disparities can be explained by methodological differences between the studies. However, some disparities can only be explained as real differences in the lawsuits studied. These differences might arise because of the circumstances at the time of each study, differences between the geographical areas studied, or the impact of differing law and procedure in the jurisdictions studied.

Figure 11 – Comparison of Key Results

	Defendant failed to respond	Defendant represented	Judgments	Overall Sample Size	Year Studied
This Study	85%	< 2%	73% <sup>165</sup>	4400 <sup>166</sup>	2009-2010
Spector Study <sup>167</sup>	77%	10%	44%	507	2007
Fox Study <sup>168</sup>	83%	4%	81% <sup>169</sup>	645	2009
Debt Deception Study <sup>170</sup>	—	0%	94%	365	2006-2008
Debt Collection Racket Study <sup>171</sup>	94%-82%	2%	38-62% <sup>172</sup>	168,807	2011
Consumers in Trouble <sup>173</sup>	70-98%	11-30%	91-92%	1504	1967
Bezdek Study <sup>174</sup>	85%	0.18%-2.8%	—	659	1991

<sup>165</sup> This number is the sum of affidavit, default, consent and trial judgments. See *supra* Figure 5.

<sup>166</sup> As mentioned earlier, out of the 4,400 case sample, only 2,947 (76%) involved cases where the complaint was served on the defendant, and the case reached final disposition.

<sup>167</sup> Spector, *supra* note 93, at 288-289, 296.

<sup>168</sup> Fox, *supra* note 12, at 377, 381. Fox's figures do not account for defendants who were not served, so the true rate of default is higher. In addition, Fox's figure of 83% for non-response is that for total non-response. Many of the responses were technically inadequate and may have been rejected by the Court.

<sup>169</sup> This figure is the aggregate of default, summary and consent judgments. *Id.* at 377.

<sup>170</sup> WILNER & SHEFTEL-GOMES, *supra* note 37, at 8. The study did not provide a figure for failure to respond complaints and observed no represented defendants.

<sup>171</sup> SHIN & WILNER, *supra* note 89, at 5-6. Note that these statistics varied by jurisdiction. The sample included basic information from all civil collection suits filed in New York. *Id.*

<sup>172</sup> These figures represent the range of *default* judgment percentage across New York jurisdictions. No figure is available in this study for non-default judgments.

<sup>173</sup> CAPLOVITZ, *supra* note 23, at 215, 221-223. The ranges given are the ranges observed as between the cities in which court actions were studied: New York, Detroit and Chicago.

The clearest trend, repeatedly highlighted in the literature, is that defendants often do not respond to collection suits.<sup>175</sup> This has been recognized by industry and consumer advocacy at least since the FTC's roundtable discussions, leading to its *Broken System* report.<sup>176</sup> The evidence suggests that the rate of default is approximately 80-90%.<sup>177</sup> Comparison with the Baltimore rent court study shows that failure to appear extends beyond consumer credit collection cases to rent cases. More recent figures from elsewhere in the country suggest that tenant defendants fail to appear just as often as the debt buyer defendants in this study.<sup>178</sup> This is significant because of the high stakes involved in rent cases, in which tenants stand to lose, literally, the roof over their heads. Despite the increased stakes, it appears that rent court defendants are no more likely to defend themselves in court than the people who are sued by debt buyers. This suggests that coercing defendants to attend and participate in court by "raising the stakes" (for example, through the creditor's contempt discussed by Shepard) is not effective.

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<sup>174</sup> Bezdek, *supra* note 108. This study is unlike the others because it concerns actions based on rent and some of the figures are not directly comparable. The range given for representation represents two figures—0.18% is the representation rate based on court files and 2.8% the rate at which defendants reported receiving legal advice. *Id.* at 556, n.79.

<sup>175</sup> A lack of debtor participation came to be a central theme of the "Life of A Debt" roundtable held by CFPB and FTC in June 2013. Lunsford, *supra* note 164.

<sup>176</sup> BROKEN SYSTEM, *supra* note 8, at 7, n.18 ("There was a broad consensus among roundtable panelists that relatively few consumers who are sued for alleged unpaid debts actually participate in the lawsuits... panelists from throughout the country estimated that sixty percent to ninety five percent of consumers debt collection lawsuits result in defaults, with most panelists indicating that the rate in their jurisdiction was close to 90%.").

<sup>177</sup> See *supra* Figure 11.

<sup>178</sup> See, e.g., WILLIAM E. MORRIS INST. FOR JUSTICE, INJUSTICE IN NO TIME: THE EXPERIENCE OF TENANTS IN MARICOPA COUNTY JUSTICE COURTS 2 (2005), available at <http://morrisinstituteofjustice.org/docs/254961Finalevictionreport-P063.06.05.pdf> (less than 20% of defendant-tenants appeared); KAREN DORAN, JOHN GUZZARDO, KEVIN HILL, NEAL KITTERLIN, WENGFENG LI & RYAN LIEBL, LAWYERS' COMM. FOR BETTER HOUS., NO TIME FOR JUSTICE: A STUDY OF CHICAGO'S EVICTION COURT 4 (2003) (56% of defendant tenants appeared), available at <http://lcbh.org/images/2008/10/chicago-eviction-court-study.pdf>. That these rates differ widely suggests that just because the case is high stakes for the individual they are not necessarily more likely to participate in the case than in lower stakes cases.

Lack of legal representation is another clear trend. Rates of attorney representation of defendants in debt buyer cases vary from 0% to 10%. Although representation rates are uniformly low, the variation between studies is extremely high: the Spector study suggests that five times as many defendants are represented in these cases in Texas as compared to Maryland or New York.<sup>179</sup> Again, Spector's figures may represent a difference in forum or economic conditions.

While the rate at which consumers do not respond to the lawsuit is uniformly high, actual rates of default judgment varied widely, from 38% to 81%, across all jurisdictions and studies. The New York studies accounted for both the highest and the lowest rate, depending on jurisdiction and date.<sup>180</sup> Various results across jurisdictions may reflect socioeconomic differences. As both New York studies observe, and as has been true at least since the 1970s, debt collection is concentrated in poor areas, and falls disproportionately on minorities.<sup>181</sup>

Figure 12 – Default Judgment Rates by County

County	Cases	Cases Served	Affidavit Judgments	Rate of Default Judgment (All cases)	Rate of Default Judgment (Served cases)
Prince George's	1020	635	373	37%	59%
Montgomery	580	340	214	37%	63%
Baltimore County	569	408	241	42%	59%
Baltimore City	565	417	164	29%	39%

<sup>179</sup> See *supra* Figure 11.

<sup>180</sup> Compare WILNER & SHEFTEL-GOMES, *supra* note 37, at 8 (highest) with SHIN & WILNER, *supra* note 89, at 6 (default judgment rate for New York City Civil Courts, lowest).

<sup>181</sup> See *supra* note 114 and accompanying text. Collectors have also been accused of intentionally targeting the poor, an allegation which they deny. Sue-in Hwang, *Once-Ignored Consumer Debts Are Focus of Booming Industry*, WALL ST. J., Oct. 25, 2004, <http://online.wsj.com/article/SB109865776922954118.html>.

Figure 12<sup>182</sup> shows the rate of affidavit judgments in the four Maryland counties for which the most claims were recorded. Montgomery County and Baltimore County are more affluent areas,<sup>183</sup> while Prince George's County and Baltimore City are less affluent with higher minority populations. Yet Baltimore City has the lowest rate of default judgment and Montgomery the highest. Baltimore City defendants appeared *less* frequently than those in Montgomery and Prince George's and as frequently as those in Baltimore County. The difference in rates cannot be explained as a result of case loads, affluence or the willingness of defendants to defend themselves. The likely explanation is that there are differences in judicial attitude. While some judges might believe that a failure to respond weighs heavily in favor of entry of a default judgment, the rules for granting affidavit judgment suggest otherwise. The law requires that before a judge may enter affidavit judgment, the debt buyer, like any other plaintiff, must present supporting documentation, plus an affidavit that affirmatively shows that the affiant is competent to testify to the matters asserted, that the affiant has personal knowledge of those matters, and that the affidavit is based on admissible evidence.<sup>184</sup>

One surprising finding is that between the time of the Caplovitz *Consumers in Trouble* study and the today, rates of defendant participation and representation appear to have dropped, while at the same time courts have become progressively less willing to grant default judgments. This may reflect a difference in methodology: Caplovitz's rates were based on interviews with defendants, and he counted those who received advice from a lawyer,<sup>185</sup> while this and other modern studies detect only cases in which a lawyer has actually entered an appearance on behalf of the defendant in the court records.

The reason for the failures to appear remain a mystery that will no doubt attract future study. In debt buyer cases, one of the most common problems is that defendants do not recognize

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<sup>182</sup> Using the sample data gathered in this study.

<sup>183</sup> For readers unfamiliar with Maryland geography, Baltimore County and Baltimore City are distinct jurisdictions. The Baltimore City jurisdiction occupies a roughly square area of 92 square miles centered on downtown Baltimore. Baltimore County surrounds Baltimore City and stretches north to the Pennsylvania border, occupying 682 square miles.

<sup>184</sup> MD. R. 3-306.

<sup>185</sup> *Id.* at 222-224. For Caplovitz's methodology, *see id.* at 8-10.

the name of the plaintiff or the amount for which they are being sued.<sup>186</sup> Further, most of the debts involved are unsecured credit card debts, which are not associated with any particular object. This disconnection, combined with the general lack of personal involvement in modern consumer credit already noted above, may be a significant cause of defendant default.

This suggestion may seem at odds with the results of Bezdek's 1992 rent court study. As noted, defendants failed to appear just as often 20 years ago in Baltimore City rent court as they do in the contemporary collection courts studied in this article.<sup>187</sup> Surely being subjected to eviction from one's home is more serious than being sued on a credit card. This may be so in some respects, but Bezdek found that, at least by the time the tenants reached rent court, the rental relationship was impersonal: there were "a few instances of 'mom-and-pop' landlords bringing legitimate claims . . . . These actions were few and far between. The primary operators in the rent court are a class of business agents . . . ." <sup>188</sup>

Bezdek noted the contrast between the deference accorded to landlords' agents in rent court and the impatience the court generally showed towards tenants.<sup>189</sup> Censorious attitudes toward debtors were also reported in 2006 by the Boston Globe, including routine threats of imprisonment.<sup>190</sup> The Globe concluded that "[o]ften, debtors are treated with less courtesy than the accused felons in the criminal court across the hall, and their rights are less respected."<sup>191</sup>

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<sup>186</sup> *Debt Buyers*, OFFICE OF THE MINN. ATTORNEY GENERAL, <http://www.ag.state.mn.us/Consumer/Publications/DebtBuyers.asp> (last visited Sept. 4, 2013) ("Some people who are sued by debt buyers do not recognize the name of the party who is suing them and ignore the lawsuit."); WILNER & SHEFTEL-GOMES, *supra* note 37, at 7 ("People sued by [a debt buyer] are often faced with lawsuits that allege unfamiliar debts, filed by debt buyers whose names they do not recognize."); Clinton Rooney, *Defense of Assigned Consumer Debts*, 43 CLEARINGHOUSE REV. 542, 545 (2010) ("[W]hen a debt buyer unknown to the consumer sends a letter claiming to be owed a debt . . . [t]he consumer likely does not even recognize the name on the envelope.").

<sup>187</sup> See *supra* Figure 11.

<sup>188</sup> Bezdek, *supra* note 108, at 556.

<sup>189</sup> *Id.* at 551-52 (noting that landlords and their agents were given some control over the timing of their cases within the rent docket while tenants were forced to wait with no indication when their cases would be called).

<sup>190</sup> Healy, *supra* note 35.

<sup>191</sup> *Id.*

Behavior of this kind undermines procedural fairness and damages public trust in the judiciary.<sup>192</sup> Neutrality and respectful treatment are among the key elements of the procedural fairness that our society expects.<sup>193</sup> Too often, courts fall short of this standard in collection cases. When, as the Boston Globe put it, dignity faces a steamroller in the courts,<sup>194</sup> it is perhaps unsurprising that the public lacks confidence in the judicial process and so fails to engage with the courts by filing defenses.

Whatever the real reason for default by defendants, and despite the decline in defendant participation and representation, the comparison to Caplovitz's day is in one respect hopeful. Then, the defendant almost invariably suffered a default judgment.<sup>195</sup> Today, a default judgment is no longer a foregone conclusion. Again this change may owe something to the subject matter of these disputes. Back then, most plaintiffs were original creditors suing on installment-type credit agreements, not debt buyers suing upon on open-ended credit card accounts. The difference may simply represent the generally poor quality of debt buyer suits. However, the growing evidence is that the lawsuits filed by original creditors are just as shoddy and poorly documented as those filed by debt buyers.<sup>196</sup>

However, it seems more likely that procedural changes

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<sup>192</sup> The importance of procedural fairness in public confidence in the judiciary was noted in a white paper of the American Judges Association in 2007. Kevin Burke & Steve Leben, *Procedural Fairness: A Key Ingredient in Public Satisfaction*, 44 COURT REV. 5 (2007).

<sup>193</sup> *Id.* at 6.

<sup>194</sup> Healy, *supra* note 35.

<sup>195</sup> In over 90% of cases, a default judgment was entered for the Plaintiff. See *supra* Figure 11.

<sup>196</sup> See, e.g., Complaint for Permanent Injunction, Civil Penalties, Restitution, and Other Equitable Relief, *People v. JPMorgan Chase & Co.*, No. BC508466, 2013 WL 1915821 (L.A. Cnty., Cal. Super. Ct. May 9, 2013) (alleging various debt collection abuses); Consent Order, Order for Restitution, and Order to Pay Civil Money Penalty, *In re American Express Bank, FSB*, No. 2012-CFPB-0003 (Consumer Fin. Prot. Bureau Oct. 1, 2012), available at <http://files.consumerfinance.gov/f/2012-CFPB-0003-American-Express-Bank-FSB-Consent-Order.pdf> (Consent Order between CFPB and American Express for "deceptive debt collection practices"); Consent Order, *In re JPMorgan Chase Bank, N.A.*, No. 2013-138, (Office of the Comptroller of the Currency, U.S. Dep't of the Treasury Sept. 18, 2013), available at <http://www.occ.gov/static/enforcement-actions/ea2013-138.pdf> (settling regulatory action by OCC for abusive debt collection); *Mississippi v. JPMorgan Chase & Co.*, No. 3:2014cv00054 (S.D. Miss. Jan. 22, 2014).

since then are largely responsible. When Caplovitz examined his cases, confession of judgment was still possible in consumer cases. In fact, Philadelphia cases were excluded from Caplovitz's analysis of outcomes in court because those cases were all confessions of judgment.<sup>197</sup> Default judgments were entered as a matter of course and without judicial oversight when defendants failed to appear or answer.<sup>198</sup> Today, entry of a default judgment is no longer supposed to be a rubber-stamping exercise which occurs in all cases of default.

While data about representation can be found in most of the studies in Figure 11, only Bezdek discusses the impact of representation. She finds representation an unconvincing explanation for the disparity between the success of landlords and tenants.<sup>199</sup> The comparison is somewhat complicated because landlords can be represented by non-lawyers, and these "landlords' agents" are in fact professional representatives.<sup>200</sup> Only a handful of tenants in Bezdek's sample were assisted, three by lawyers, six by friends or relatives.<sup>201</sup> All of them managed to avoid an entirely negative outcome.<sup>202</sup> Bezdek sees this as a sign that it may not be *representation* per se which improves the tenant's outcome.<sup>203</sup> Unfortunately, informal assistance by non-lawyers was beyond the reach of this study,<sup>204</sup> so the importance of brief advice and assistance compared to full legal representation remains fertile ground for further research.

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<sup>197</sup> CAPLOVITZ, *supra* note 23, at 192.

<sup>198</sup> *Id.* at 201-03.

<sup>199</sup> Bezdek, *supra* note 108, at 562-63.

<sup>200</sup> MD. CODE ANN., BUS. OCC. & PROF. § 10-206(b) (West 2011) (providing that "a person . . . representing a landlord" need not be admitted to the Bar; the same exception is conferred to those representing a tenant if the person is a law student or employee of an organization funded by the Maryland Legal Services Corporation).

<sup>201</sup> Bezdek, *supra* note 108, at 562.

<sup>202</sup> *Id.*

<sup>203</sup> *See id.* at 563 ("The fact that the tenants who were assisted by non-lawyer friends or relatives achieved more success than the average tenant invites the speculation that qualities other than legal representation may account for some tenants' persistence in court. Qualities such as encouragement . . . and assistance in presenting [the matter] oneself may account for a more successful hearing. . . . Perhaps the significance of assistance to tenants . . . is chiefly the breaking of [the rent court's] rhythm [of landlord-plaintiff claims].")

<sup>204</sup> Such assistance could only be discovered by interviewing defendants, and perhaps by observing hearings.

#### IV. RECOMMENDATIONS

##### A. *Acknowledge That We Have a “Shadow System” for Collections*

An adversarial process overseen by a neutral judge is the supposed hallmark of the American justice system. Each side has a lawyer who is a zealous advocate, and a judge presides while a judge or jury determines the facts, applies the law and decides an outcome. Any cracks in the system are supposed to be filled by public defenders, legal aid lawyers, court appointed lawyers, or lawyers who are providing pro bono representation.

The reality is quite different. For consumer defendants in collection cases, there is a “shadow system” which is characterized by a lack of public awareness, a lack of formal rules, a lack of understanding on the part of defendants, and a lack of legal representation. In short, our broken debt collection system is scarcely recognizable to the uninitiated. Before we can move forward, we need to fully accept the fact of just how far the system falls short of traditional notions of due process.

##### B. *Restore the Rules of Evidence to Ensure Due Process.*

Due process concerns are implicated when courts do not require that claims be proved by admissible evidence authenticated by someone with relevant personal knowledge about the evidence being proffered. Debt buyer lawsuits have proliferated because courts have not insisted on this, preferring to wield the rubber stamp rather than engage in the more demanding job of acting as guardians at the gates. Too often, debt buyers do not have admissible evidence to prove that a consumer was ever liable to a bank or that the debt buyer has standing to sue, and do not have reliable evidence to prove damages. Debt buyers often do not have the proof because the banks either did not have it or chose not to transfer it at the time the portfolios of debt were sold.<sup>205</sup>

The percentage of default judgments obtained by debt buyers exists because judges have allowed relaxed and informal

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<sup>205</sup> Holland, *supra* note 37, at 272; Peter A. Holland, *Defending Junk Debt Buyer Lawsuits*, 46 CLEARINGHOUSE REV. 12, 14 (2012).

procedures—originally intended to streamline small-stakes cases brought by self-represented litigants—to be used by some of America’s most powerful financial services corporations, fully lawyered up, against the very lawyer-less litigants whom small claims procedures were supposed to protect.

### C. Revisit the Model Rules of Professional Conduct

The study of collections lawsuits is largely a study of what happens in the absence of an adversarial system. Because civil litigants do not currently have a right to counsel, the question for the profession becomes whether we are doing the right thing even when nobody is looking. In light of the abundant documentation of litigation abuses, and the knowing sale of junk debt by banks, the legal profession as a whole needs to step up and fix the problems. The Preamble to the Model Rules of Professional Conduct states that lawyers have “a special responsibility for the quality of justice.”<sup>206</sup> This special duty is partially spelled out in the Model Rules. One such rule is Model Rule 3.3, which prohibits lawyers from knowingly making false statements of fact to a tribunal or failing to correct false statements of fact to a tribunal.<sup>207</sup>

The Rule 3.3 problem arises because lawyers for debt buyers refuse or fail to advise the tribunal about the contents of the Purchase and Sale Agreement between the bank and the debt buyer, which often specifically disclaims any warranties (including warranties of title), and which in some cases state that the account balances are only “approximate.”<sup>208</sup> It is difficult not to conclude that lawyers who represent to a tribunal that there is a precise balance owing, when in fact the balance is only “approximate,” are engaging in a misrepresentation of material fact or a

<sup>206</sup> MODEL RULES OF PROF’L CONDUCT pmb. ¶ 1 (2011).

<sup>207</sup> *Id.* at R. 3.3.

<sup>208</sup> See *supra* notes 15, 78 and accompanying text. See also Jeff Horwitz, *Bank of America Sold Card Debts to Collectors Despite Faulty Records*, AM. BANKER, March 29, 2013, [http://www.americanbanker.com/issues/177\\_62/bofa-credit-cards-collections-debts-faulty-records-1047992-1.html](http://www.americanbanker.com/issues/177_62/bofa-credit-cards-collections-debts-faulty-records-1047992-1.html) (explaining that the sales contracts between banks and debt buyers often disclaim “‘any representations, warranties, promises, covenants, agreements, or guarantees of any kind or character whatsoever’ about the accuracy or completeness of the debts’ records” resulting in the sale of claims for balances which are only approximate, that may have already been paid in full or discharged in bankruptcy).

failure to correct a previous misstatement of material fact. Comment 2 of Rule 3.3 states that the purpose of the Rule is “to avoid conduct that undermines the integrity of the adjudicative process.”<sup>209</sup> Comment 7 to the Rule states that in general in a civil case, “if necessary to rectify the situation, an advocate must disclose the existence of the client’s deception to the court or to the other party.”<sup>210</sup> Comment 7 goes on to state that if the Rule were otherwise, “the client could in effect coerce the lawyer into being a party to a fraud on the court.”<sup>211</sup> Comment 13 to Rule 3.3 states that “the advocate must disclose” cases of actual perjury by a client regarding a material fact.<sup>212</sup> It is difficult to discern how robo-signed affidavits containing forged signatures, or which falsely claim to be based on personal knowledge, do not constitute actual perjury by a client, which are the subject of mandatory disclosure by the client’s advocate.

Based on this author’s anecdotal experience, many debt buyer attorneys report that they don’t receive the Purchase and Sales Agreement as part of their file. This is not satisfactory, because to be competent, a lawyer must always investigate the relevant facts and law prior to filing a lawsuit.<sup>213</sup> As stated by one court, in a collection case “where an attorney commences suit in so uninformed a manner that he is ignorant even as to what law governs his suit, it cannot be said that he has undertaken a level of review sufficient to satisfy even the most general requirements of attorney conduct . . . .”<sup>214</sup>

It is understandable that as more and more secret Purchase and Sale Agreements become public, the faith of the courts and the public continues to be shaken. In the context of robo-signing directed by a foreclosure lawyer, Maryland’s highest court recently stated that “even the slightest accommodation of deceit or lack of candor in any material respect quickly erodes the validity of the process.”<sup>215</sup> Once the procedural validity starts to

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<sup>209</sup> MODEL RULES OF PROF’L CONDUCT R 3.3 cmt. 2 (2011).

<sup>210</sup> *Id.* at cmt. 7.

<sup>211</sup> *Id.*

<sup>212</sup> *Id.* at cmt. 13.

<sup>213</sup> *Id.* at R 1.1.

<sup>214</sup> *Miller v. Upton, Cohen & Slamowitz*, 687 F. Supp. 2d 86, 98 (E.D.N.Y. 2009).

<sup>215</sup> *Attorney Grievance Comm’n of Md. v. Dore*, 73 A.3d 161, 178 (Md. 2013) (quoting *United States v. Shaffer Equipment Co.*, 11 F.3d 450, 457 (4th

erode, “the people are then justified in abandoning support for the system in favor of one where honesty is preeminent.”<sup>216</sup> It is up to the profession, in an act of self-governance, to restore a system in small claims courts “where honesty is preeminent.” Debt buyers profit by filing vast numbers of suits that are at best unsubstantiated and at worst fraudulent. They do so with the cooperation of lawyers, who also profit from this behavior. The attitude that all of the known problems of proof in debt buyer cases can be ignored unless a defense is mounted is no longer acceptable.

#### *D. Revisit the Model Code of Judicial Conduct*

The Model Code of Judicial Conduct needs to be updated to reflect the modern reality of self-representation and of sophisticated lawyers running roughshod over self-represented litigants. The Model Code requires impartiality and fairness in general but does not specifically refer to self-represented litigants.<sup>217</sup> The Maryland Code of Judicial Conduct more clearly establishes the power of judges to make reasonable accommodations to ensure that self-represented litigants have the “the opportunity to have their matters fairly heard.”<sup>218</sup> Comment 2 to Rule 2.6 in Maryland talks about ensuring that self-represented litigants have the “right to be heard.”<sup>219</sup>

These rules assume that there is a self-represented litigant who is participating and wants to “be heard.” But the problem with debt buyer lawsuits—and with small claims in general—is that the vast majority of defendants do not show up and ask to “be heard.” The Rules need to be updated to give judges guidance for appropriate conduct dealing with unrepresented parties in the vast majority of cases where they do not appear in court. One test of our system is what happens when both sides have excellent lawyers who are zealous advocates. But an equal test, which impacts a far greater number of people, is what happens when one side consistently does not have a lawyer (or does not even show

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Cir. 1993)).

<sup>216</sup> *Id.*

<sup>217</sup> MODEL CODE OF JUDICIAL CONDUCT R. 2.2 (2011).

<sup>218</sup> MD. CODE OF JUDICIAL CONDUCT R.2.2 cmt. 4 (2010).

<sup>219</sup> *Id.* at R.2.6 cmt. 2. Note, however, that no such comment exists in the ABA Model Code. *See* MODEL CODE OF JUDICIAL CONDUCT R. 2.6 (2011).

up), while the other does. How do we ensure a level playing field amidst so great an imbalance of power? Judges need further guidance in this area to ensure that our system can pass both tests. To that end, the Model Code needs updating.

*E. Revisit the Law School Curriculum.*

When they first observe the shadow system, students and practicing lawyers are surprised to discover that there are sometimes court rooms with no judges in them, trials with no witnesses, and hallways filled with lawyers presenting defendants with settlements which are doomed to fail. The surprise comes not only from due process and equal protection concerns, but also from the fact that “nobody ever told me about this” either in law school or in law practice. The fact that it is unknown and not discussed is precisely what makes it a “shadow system.”

While the philosophical debate over the proper balance between theory and practice in law schools continues, access to a lawyer becomes less and less obtainable for the majority of Americans in the majority of cases.<sup>220</sup> While lack of access to lawyers has many causes, one cause is that students, professors, and even most lawyers are totally unaware of the shadow system.

Law students should be exposed to the shadow system early in their law school career. This requires only a few hours of direct courtroom observation, which would not interfere with existing course demands. There would be several immediate benefits to the student, to the academy and to the profession. First, it would break the myth of the adversary system that is assumed throughout law school. Second, it would immediately infuse first year classes with real world issues of legal profession and procedure. Third, it might serve as a deterrent to judicial rubber-stamping and restore some balance to proceedings when judges know that students are watching and reporting back. Fourth, it would inspire more future lawyers to think creatively about how to im-

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<sup>220</sup> See e.g., Thomas D. Morgan, *Foreword: Training Law Students for the Future: On Train Wrecks, Leadership & Choices*, 6 U. ST. THOMAS L.J. 297 (2009) (foreword to a symposium issue on “the ‘train wrecks’ that legal education may soon experience”); BRIAN Z. TAMANAHA, *FALLING LAW SCHOOLS* (2012); I. Richard Gershon, *In Ten Years All New Law Schools*, 44 U. TOLEDO L. REV. 335 (2013) (suggesting that the creation and destruction of new law schools will drive innovation).

prove delivery of legal services to underrepresented client populations, either through pro bono, low bono, fee shifting, counterclaims, or class actions.

One of the reasons that appellate cases are valuable as teaching tools is because the lawyers did such a great job in developing the facts and exploring the law. The fact that most people in this country today do not have and cannot afford a lawyer is relevant to our understanding of how the law develops. For example, very few *pro se* plaintiffs can survive a Motion to Dismiss in this post-*Iqbal* world we now live in.<sup>221</sup> And even if they could, it is impossible for most consumers to bring *their* disputes to court, because of the Supreme Court's recent jurisprudence about forced arbitration.<sup>222</sup> Early exposure to the shadow system would demonstrate to students that the life of the law is neither logic nor experience; it is both, and the constant struggle to establish the proper balance should begin with students gaining early exposure to the law as it exists for the vast majority of our citizens in the vast majority of cases.

#### F. Adopt Simple, Common Sense Reforms

Just as Lord Coke predicted, the sale of causes of action has created confusion and a multiplication in the number of lawsuits.<sup>223</sup> One of the goals of this paper is to spark debate on these and other proposals for reform. Below is a partial list of some common sense reforms.

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<sup>221</sup> Ashcroft v. Iqbal, 556 U.S. 662 (2009); Patricia W. Hatamyar, *The Tao of Pleading: Do Twombly and Iqbal Matter Empirically?*, 59 AM. U. L. REV. 553, 629 (2010) (noting that 85% of motions to dismiss on pleading grounds in *pro se* cases were granted following Iqbal); *c.f.* Raymond H. Brescia, *The Iqbal Effect: The Impact of New Pleading Standards in Employment and Housing Discrimination*, 100 KY. L.J. 235 (2011).

<sup>222</sup> Jean R. Sternlight, *Mandatory Binding Arbitration Clauses Prevent Consumers from Presenting Procedurally Difficult Claims*, 42 SW. U. L. REV. 87 (2012) (explaining the hurdles established by Supreme Court arbitration jurisprudence); Beth Davis, *Mandatory Arbitration Agreements in Long-Term Care Contracts: How to Protect the Rights of Seniors in Washington*, 35 SEATTLE U. L. REV. 213 (2011) (reporting how claims of elder abuse are suppressed by the use of arbitration clauses in long-term care facility contracts in Washington state).

<sup>223</sup> See *supra* note 42 and accompanying text.

1. Ban “as is” sales contracts and require full documentation.

If banks do not have the requisite proof to pursue the claims in their own name, they should not be allowed to sell off accounts with full knowledge that the purchaser will use the courts to extract default judgments, despite the fact that there is no adequate data to prove the debt. Arguably, if improvident lending or irresponsible consumer behavior ultimately results in default, then any discretionary lawsuit should be pursued by the bank that was allegedly harmed, not by some unknown investor in claims. But if debts are to be sold, they should be sold whole: complete with *all* of the information that the bank would need if it were suing in its own name. This requires proof of liability for breach of contract and proof of contract damages. Such proof would include the underlying contract, a running balance on the account, and a breakdown of the principal amount of money borrowed, plus a separate itemization of all interest, all late fees, all over limit fees, all add-on products, all maintenance fees, and any other fees that were added to the principal amount. It is notable that recovery of any fees or interest are limited to those bargained for in the underlying contract, which is missing in almost every debt buyer case.

Another option would be to limit any recovery to the amount of the principal amount of the original extension of credit, and to specifically exclude from recovery all finance charges such as interest, late fees and over-limit fees which cannot be proved by a written contract.

2. Require full disclosure of un-redacted forward flow agreements

The Purchase and Sale Contracts (also known as “Forward Flow Agreements”) between banks and debt buyers must no longer remain secret. For all the cases that are currently in litigation in which the bundle of debt was sold “as is” with all faults, and with explicit disclaimers of warranty, this fact needs to be widely publicized to the defendants and to the courts. All debt buyer lawsuits should contain a copy either the original Forward Flow Agreement (at forty or more pages this may prove inconvenient) or a link to a website that hosts the specific forward flow agreement which goes with each account. An easy example is the

agreement between FIA Card Services, Inc. and CACH, LLC which was highlighted by the American Banker for its explicit disclaimers of warranty, including that the debt may not be owed, may have been discharged in bankruptcy, may be the result of fraud, may not be supported by documentation, and that the balance amount is only “approximate.”<sup>224</sup> Can lawyers, in their role as “public citizens having a special obligation to ensure the quality of justice” think of any possible justification for hiding from the tribunal the fact that the bank disclosed at the time of sale that the consumer may not be liable, and that even if liable, that the stated amount of liability is only “approximate”?

3. Adopt statutes mandating reciprocal fee shifting in consumer contract cases

Most consumer contracts for goods or services state that if the creditor files a lawsuit, the consumer must pay all collections costs and all of the creditor’s reasonable attorneys’ fees. Legislatures could adopt a statute that states simply that in a consumer contract, if there is a provision for attorneys’ fees in the event that the creditor prevails, the provision is reciprocal as a matter of law. Many states have such a statute already.<sup>225</sup> Such a statute incentivizes the private bar to step forth and provide a defense, when a meritorious defense exists. This should have a deterrent effect on the filing of cases that cannot be proven.

4. Provide same day lawyers in the courthouse

If the “adversarial presentation of evidence and arguments” is to survive,<sup>226</sup> we must ensure that legal help is available to those who need it. Persuading defendants to represent themselves will always be difficult if they are forced to navigate a strange and hostile system without sufficient advice or assistance

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<sup>224</sup> Horwitz, *supra* note 208; Loan Sale Agreement, *supra* note 45.

<sup>225</sup> Jeffrey C. Bright, *Unilateral Attorney’s Fees Clauses: A Proposal to Shift to the Golden Rule*, 61 DRAKE L. REV. 86, 114-120 (2012) (noting the different approaches taken by state statutes which require fee-shifting reciprocity).

<sup>226</sup> The strength of the adversarial tradition is such that “our entire dispute resolution system depends on the integrity of the participants, who seek the truth through an adversarial presentation of evidence and arguments.” Attorney Grievance Comm’n of Md. v. Dore, 73 A.3d 161, 178 (Md. 2013).

from the legal profession. Even if defendants can be convinced to participate in the lawsuits, they will not receive justice without legal help. The defendants in this study who did file a response to the lawsuit (presumably the most committed defendants) fared much worse than those who had a lawyer. At a minimum, consumers sued in collection courts should be able to get some legal advice before they enter what has become the lion's den. To this end, courthouse projects staffed by volunteer or legal services attorneys have proven highly successful in delivering limited unbundled legal advice.<sup>227</sup> While this "half a loaf" approach is not ideal, it does provide limited ammunition to the astute few self-represented litigants who aspire to a fair fight in court. Further, because the evidence in debt buyer cases is inherently shoddy (as evidenced in the "as is" Forward Flow Agreements) these trials should be easy for a self-represented litigant to win, with a little bit of help and coaching from a lawyer.

## CONCLUSION

This article has provided a window into the opaque world of consumer defaults in debt buyer law suits. Forty years ago, David Caplovitz described the economic condition of consumers who defaulted on their debts to the businesses that had extended them credit. Much of what he observed applies equally to today's defendants in debt buyer lawsuits. Like their counterparts from forty years ago, today's defendants lack adequate health insurance,<sup>228</sup> lack a safety net sufficiently broad to prevent the traumatic financial consequences of sickness or unemployment,<sup>229</sup> and lack the tools to avoid financial scams.<sup>230</sup>

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<sup>227</sup> Maria Aspan, *supra* note 55 (noting the work of the ProBono Resource Center of Maryland).

<sup>228</sup> TERESA A. SULLIVAN, ELIZABETH WARREN & JAY LAWRENCE WESTBROOK, *THE FRAGILE MIDDLE CLASS: AMERICANS IN DEBT* (2001); Melissa B. Jacoby, Teresa A. Sullivan & Elizabeth Warren, *Rethinking the Debates over Health Care Financing: Evidence from the Bankruptcy Courts*, 76 N.Y.U. L. REV. 375 (2001).

<sup>229</sup> Robert J. Landry, III & Amy K. Yarbrough, *Global Lessons from Consumer Bankruptcy and Healthcare Reforms in the United States: A Struggling Social Safety Net*, 16 MICH. ST. J. INT'L L. 343 (2007).

<sup>230</sup> Contemporary concern focuses on payday loans. See, e.g., Marcie Geffner, *Payday loans 'unaffordable'*, BANKRATE.COM BANKING BLOG (Feb. 22, 2013, 3:00 PM), <http://www.bankrate.com/financing/banking/payday-loans->

The bench, the bar and the academy each have a role to play in shining the light onto the shadow system, thereby paving the way to much needed reforms.

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unaffordable/ (reporting the findings of the Pew Charitable Trust); PEW CHARITABLE TRUSTS, HOW BORROWERS CHOOSE AND REPAY PAYDAY LOANS (2013), *available at* [http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Safe\\_Small\\_Dollar\\_Loans/Pew\\_Choosing\\_Borrowing\\_Payday\\_Feb2013.pdf](http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Safe_Small_Dollar_Loans/Pew_Choosing_Borrowing_Payday_Feb2013.pdf); Gretchen Morgenson, *Find the Loan Behind the Loans*, N.Y. TIMES, Sept. 7, 2013, [http://www.nytimes.com/2013/09/08/business/find-the-loan-behind-the-loans.html?\\_r=0](http://www.nytimes.com/2013/09/08/business/find-the-loan-behind-the-loans.html?_r=0) (noting recent pressure by state regulators on online, payday lenders).

## APPENDIX A: FULL PROTOCOL OF STUDY

I assigned the gathering of data relating to certain debt buyers and years to clinic students, who then entered the data into a pre-formatted Microsoft Excel spreadsheet. Some students gathered data on a single debt buyer in a single year, while others gathered multiple debt buyers and years. For example, an individual student was responsible for gathering data regarding 200 lawsuits filed in the District Court by Midland Funding, LLC during the 2009 calendar year. Under this system each student gathered between 200 and 800 records. Any questions regarding the study's protocol were addressed as they arose.

Data were gathered from Maryland Judiciary Case Search ("Case Search"), which is a searchable online database containing the actual court dockets. Case Search can be searched in a number of ways: by case number, filing date, jurisdiction and party names. Pursuant to the written protocol, students gathered data by searching for the named debt buyers appearing as plaintiffs in civil cases in the District Court of Maryland.<sup>231</sup> Without any parameters for dates, Case Search will display a maximum of 500 search results for any given search. Because many debt buyers filed large numbers of cases, it was necessary to limit each search to a specific month or even a specific day.<sup>232</sup> Using a random number generator, a case was then randomly selected from the

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<sup>231</sup> Using Case Search to search for party names is problematic: Case Search will only detect literal matches for part or all of a party name. Searching for the proper legal name of a debt buyer would often miss many cases filed by that debt buyer. For example, "Pasadena Receivables, Inc." will often appear in court records without the comma or period, without "Inc" or with simple spelling errors such as reversing the "i" and the "e" in "Receivables". To address this problem, the first word of the plaintiff's name was used in the search criteria. *For example*, for "Pasadena Receivables, Inc." the search term was "Pasadena". Any search results unrelated to the debt buyer were ignored. Because the name of each debt buyer was rather unique, the number of unrelated search results were minimal and statistically insignificant.

<sup>232</sup> First, students were instructed to select a random month, by requesting a random number between 1 and 12 from <http://www.random.org>. The student would then enter a data range in case search covering that month. *For example*, April 1<sup>st</sup>, 2009 to April 30<sup>th</sup>, 2009. If this search produced more than 500 results, the student would request a new random number between 1 and the number of days in the selected month, and then conduct the search again for the day selected.

cases filed in the District Court in that month or on that day.<sup>233</sup> The student would copy the specified data from the record on Case Search.<sup>234</sup>

After the data were gathered, quality control checks were performed and, as discussed below in detail, any outliers were removed. First, some aberrant cases were removed and replaced: duplicates of cases which despite randomization, were sampled more than once, cases which were transferred to another jurisdiction,<sup>235</sup> which simply recorded the entry of a foreign judgment,<sup>236</sup> where the complaint amount was zero or where the principal amount of the judgment was greater than the complaint amount.<sup>237</sup> Second, the consistency of spelling was checked to en-

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<sup>233</sup> Again, the randomization was performed using <http://www.random.org>.

<sup>234</sup> The data were: Case Number, Plaintiff, Court, Filing Date, Case Status (Active, Closed or Bankruptcy), Complaint Amount, Judgment Type (Affidavit Judgment, Consent Judgment for P, Consent Judgment for D, Default Judgment for P, Default Judgment for D, Trial Judgment for D, Trial Judgment for P, 3-506(B) Dismissal upon Stipulated Terms, Rule 3-506 Dismissal, Rule 3-507 Dismissal, Complaint Dismissed by Court) (this category was left blank if no judgment/dismissal had been entered in a given case), Judgment Amount (this category was left blank unless a judgment against D was entered), Judgment Interest (this category was left blank unless a judgment against D was entered), Attorney Fees (this category was left blank unless a judgment against D was entered), Court Costs (this category was left blank unless a judgment against D was entered), Other Amounts (this category was left blank unless a judgment against D was entered), Total Judgment (Judgment Amount + Judgment Interest + Attorney Fees + Court Costs + Other Amounts), Whether post judgment interest at the legal rate was awarded, Whether the Defendant filed a Notice of Intention to Defend, Whether the Defendant had an Attorney, Defendant's address, Defendants zip code, Plaintiff's Attorney, Plaintiff's Attorney's Firm.

In all cases the case number was preceded by an asterisk, to prevent the spreadsheet software from truncating case numbers that began with a zero. All amounts were entered as simple numbers. All yes or no data were recorded as their "Yes" or "No".

<sup>235</sup> These were removed because the case record did not cover the whole course of the case.

<sup>236</sup> *Id.*

<sup>237</sup> These two categories were removed because they seemed to indicate substantial errors in the data recorded on Case Search which would harm the accuracy of the results in general. Note that cases were only removed if the judgment amount (i.e. the amount of the complaint for which plaintiff obtained judgment), not the total judgment, was greater than the complaint. The former indicates an error, while the latter is caused by the addition of costs, interest and attorneys' fees.

sure that data could be properly analyzed automatically.<sup>238</sup> Third, one particular judgment type was rechecked: dismissals under Rule 3-506. There appeared to have been some confusion among students that led to some Rule 3-506(b) dismissals being wrongly recorded as Rule 3-506 dismissals. All cases with the Rule 3-506 judgment type were re-checked by a teaching assistant and any errors in judgment type were corrected.

Finally, 10% of the sampled cases were re-checked against Case Search for errors. A total of fifty-one errors or omissions were detected. The errors were not material, relating to defendants' addresses or plaintiff's attorneys or firms. All of these errors were corrected before subsequent analysis.

The last step before analysis of the data was to check the quantitative data for outliers. The quantitative variables are "Complaint Amount," "Judgment Amount," "Interest," "Costs," "Other Amounts," "Atty Fees," and "Total Judgment." Each category had many data points beyond two deviations of the mean and even three deviations of the mean. For example, in "Complaint Amount," 0.023% of data fell outside two standard deviations of the mean, and 0.009% of data fell outside three standard deviations. Scatterplots revealed that many of the quantitative variables were generally normally distributed.

Rather than arbitrarily remove data outside of two or three standard deviations, only a couple of very extreme data points were removed (all other data generally behaving normally) to provide the most robust presentation of data. The only data outliers removed were a complaint amount of \$252,260 (approximately 48 standard deviations greater than the mean), and a costs datum of \$650 (approximately 30 standard deviations greater than the mean). These data were very likely the result of typographical recording errors in Case Search itself.

The complaint amount outlier was not a case that resulted in judgment against the defendant; therefore, none of the judgment related variables were impacted. The average complaint amount with this outlier included was \$3,050.38 with a standard deviation of \$5,149.06. Removing this outlier decreased the average complaint amount to \$2,993.73 with a standard deviation of

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<sup>238</sup> Zip codes were also limited to five digits, and any quantitative data which had been entered as currency were changed to a simple number to aid computer analysis.

\$3,520.56.

The costs outlier was removed and the mean for costs without this outlier was imputed in its place. Imputation was necessary because completely removing this datum would have provided a less precise measurement of the average total judgment category, which includes costs.

# **EXHIBIT 3**

(Rancho Santa Fe Community of the San Diego Court Jurisdiction is racist)

VOTER HUB: Find explainers, an interactive virtual ballot guide and everything else you need to know to vote Nov. 5.



Tony Zuniga

# The hidden history of racism in San Diego deeds

By Cristina Kim / Racial Justice and Social Equity Reporter

Published November 19, 2021 at 6:00 AM PST

This story was published more than 2 years ago.



LISTEN • 4:52

Show transcript

Buried in the deeds of homes and subdivisions across San Diego County are racially restrictive covenants written in the early 20th Century that were meant to bar **Black**, Asian, Latino and Jewish people from homeownership.

The Supreme Court outlawed these covenants in 1948. But though the racist language is no longer enforceable, it still exists in many deeds in San Diego's signature neighborhoods, including North Park, Mission Hills and La Jolla.

In this three-part series, KPBS follows the paper trail to help explain how the **racism** of our past created inequities that we still grapple with today.

## Read the series:



Local

# How discriminatory covenants shaped San Diego homeownership

November 17, 2021

Racially restrictive covenants were once common across San Diego County. Though deemed illegal in 1948, the language still appears in many home and property deeds across the county.

LISTEN • 5:39

**Par. 2. Section 2. (a) Limitation of Occupancy and Ownership.** No part of said property shall be sold, conveyed, rented or leased in whole or in part to any person of an African or Asiatic race or to any person not of the white or Caucasian race.

(b) No part of said property shall be used or occupied or permitted to be used or occupied in whole or in

Local

## A reckoning in Rancho Santa Fe over its racist legacy

November 18, 2021

For nearly a century, Rancho Santa Fe has boasted one of the most expensive and sought after ZIP codes in the country. But the discriminatory document that established the enclave remains a flashpoint.

LISTEN • 5:07

# **EXHIBIT 4**

(LA Times Rancho Santa Fe is infected with Due Process Violations)

CALIFORNIA

# FBI Launches Fraud Hotline in San Diego

BY TONY PERRY

OCT. 25, 1996 12 AM PT

TIMES STAFF WRITER

SAN DIEGO — The FBI, in the wake of bribery convictions of two ex-judges and a prominent attorney, announced this week that it has instituted a hotline for people in San Diego to report allegations of governmental corruption.

Robert Walsh, special agent in charge of the FBI office, said the FBI will investigate all reports of corruption in local, state or federal government.

The 24-hour hotline (888-FBI-FRAUD) will provide an outlet for people who might be afraid to report corruption by their bosses or colleagues or are unsure of how to make such a report, Walsh said. Similar hotlines have been used in other cities.

“Corruption is a crime conducted in secrecy,” Walsh said. “The corrupt official, by virtue of position, has considerable discretion and may easily conceal corrupt decisions and actions.”

After the federal conviction Friday of ex-Judges G. Dennis Adams and James Malkus and prominent attorney Patrick Frega, prosecutors repeatedly stressed that the case does not mean that San Diego’s court system is corrupt.

Still, the trial revealed that a number of attorneys and court workers had long known of the close relationship between Frega, Adams, Malkus and ex-Judge Michael Greer, who earlier pleaded guilty, but had kept quiet.

Also, an investigation by the California Commission on Judicial Performance of the same allegations uncovered an easygoing attitude on the part of some San Diego judges toward letting attorneys pick up greens fees, dinner tabs and other small items.

William A. Howatt Jr., presiding judge of the San Diego County Superior Court, said that since the commission began its investigation, San Diego judges have reevaluated their relationships with attorneys, particularly how much socializing is proper. “The judges are reacting very carefully and very cautiously,” Howatt said.

Robert Fellmeth, a law professor and ethics expert at the University of San Diego, congratulated U.S. Atty. Alan Bersin for pursuing the case despite criticism that he is an outsider who does not understand the informal ways of San Diego. Outsiders often uncover corruption that local authorities overlook, he said.

Tony Perry

Tony Perry is the former San Diego bureau chief for the Los Angeles Times.

# **EXHIBIT 5**

(Entire California Judicial is Broke with sex in chambers)



CALIFORNIA

## 43 California judges were reprimanded for misconduct last year

BY MAURA DOLAN | STAFF WRITER

APRIL 4, 2015 7:37 PM PT

Reporting from SAN FRANCISCO — Two judges had sex with women in their chambers, one with his former law students, the other with his court clerk.

A traffic court judge delegated his job to his clerk. While the judge was in chambers, the clerk heard pleas and imposed sentences.

A family law court judge excoriated two parents who appeared before him as “rotten” and the mother a “train wreck” and a “liar.”

The judges, among 43 disciplined last year by California’s Commission on Judicial Performance, received rebukes ranging from public censure or admonishment to a confidential “advisory” letter. The state watchdog agency documented the transgressions in an [annual report](#) that provides a behind-the-scenes look at errant behavior on the bench and how it is addressed.

Sexual transgressions are likely to be viewed with gravity, as are repeated remarks from the bench that belittle and humiliate lawyers and litigants, the new report suggested. The vast majority of complaints against judges result in no discipline, and most misconduct is resolved by sending judges private letters.

UC Berkeley law professor Christopher Kutz said a judge’s conduct must be extreme before the system metes out discipline. The state has about 1,800 judges, and generally fewer than 50 each year receive some form of reprimand.

“Certainly,” Kutz said, judges disparage lawyers and litigants “much more often than the number of disciplinary cases would suggest. There is a lot of latitude for judicial misbehavior.”

Judicial misconduct may be underreported because few people know there is even a mechanism for filing complaints, said Victoria B. Henley, director and chief counsel for the watchdog agency.

Judges elected by voters to the trial bench are more likely to get in trouble than jurists appointed by governors, and female judges and those with the most seniority tend to have less misconduct, records show.

“It does vary from year to year,” Henley said. “Here it is only past March and we already have three cases with formal charges” against judges.

Among the five most serious offenders last year were Orange County Superior Court Judge Scott Steiner, a former prosecutor elected to the bench, and Kern County Superior Court Judge Cory Woodward, appointed by former Gov. Arnold Schwarzenegger.

Steiner had sex in his chambers with two former students and tried to get one of them a job in the county prosecutor’s office, the commission said. Woodward had sex with his court clerk in chambers and passed her salacious notes during proceedings, according to the report.

“Engaging in sexual intercourse in the courthouse is the height of irresponsible and improper behavior by a judge,” the commission said.

Woodward’s misconduct could have led to his removal from the bench, the report said, but being contrite, fully cooperating with investigators and earning reviews that he was hard-working, intelligent and conscientious spared him.

Former Los Angeles Superior Court Judge Ronald M. Sohigian, appointed by Gov. George Deukmejian in 1988, received a public admonishment for treating attorneys in a “sarcastic and belittling manner.” Sohigian told a lawyer who objected to a ruling that he would explain it to him “sometime when you pay tuition.”

The commission said Sohigian was a repeat offender — he had been privately disciplined twice before — and it rejected his defense that he was trying in one case to curb a lawyer’s disrespectful attitude.

“Even when dealing with difficult litigants and counsel,” the commission said, “judges are required to comport themselves in accordance with the Code of Judicial Ethics.” The rules say judges must be dignified and courteous.

Solano County Superior Court Judge Daniel J. Healy, cited for denigrating family law litigants, called parents “rotten,” told others they were “stupid and thuggish” and “a total human disaster.”

In one case, he told parents that if their child were like them, they “might as well have her start walking the street as a hooker.” In another, Healy told a father that his plans to get a job represented “pie in the sky” because he was “morbidly obese and at risk of dying any time.”

Healy, elected to the bench in 2010, explained that he had to be blunt to send a message.

The fifth case of public punishment was fairly clear cut. San Mateo County Superior Court Judge Joseph Scott, appointed by former Gov. Gray Davis in 2003, received a public admonishment for driving under the influence.

Nearly 90% of the complaints came from litigants or their relatives. Attorneys filed complaints in 3% of the cases and judges and court staff in 2%.

The report showed that the number of complaints has been generally rising since 2005, and the percentage of those disciplined has been relatively flat. The commission has recommended yanking judges from the bench only six times since 2005, a sanction reserved for persistent and pervasive misconduct.

Misconduct that led to removals in the past included ticket-fixing, accepting expensive gifts from lawyers and litigants whose cases the judges decided, lying to the commission and submitting false reports for court expenses, Henley said. Three judges in San Diego County who were removed on the commission's recommendation later went to federal prison for using the U.S. mail to transmit false information to the commission, Henley said.

The bulk of disciplinary cases result in confidential letters advising judges of their errant ways or rebuking them. The governor and the president can see these so-called stinger letters if the judges are under consideration for promotion.

Most discipline last year and in the past involved judges who mistreated litigants and lawyers. In 2014, people without lawyers appeared to suffer disproportionately from judicial wrath. One unidentified judge not only berated a criminal defendant representing himself but "sometimes appeared to assume a prosecutorial role in questioning the defendant," the commission said.

Several judges received advisory letters for failing to disclose potential conflicts of interest or showing favoritism. One judge got in trouble for comments on social media that smacked of impropriety and partiality. Another was dinged for waiting more than nine months to sign a proposed judgment in a civil case.

Henley said most of the dismissed complaints involve judges' rulings. The commission, made up of lawyers, judges and members of the public, does not discipline jurists for legal errors. Some complaints cite behavior that is not misconduct, such as asking a litigant questions during a small-claims hearing.

The point of making public the circumstances behind confidential rebukes, the report said, was to educate the public and “assist judges in avoiding inappropriate conduct.”

[maura.dolan@latimes.com](mailto:maura.dolan@latimes.com)

Twitter: [@mauradolan](https://twitter.com/mauradolan)



Maura Dolan

Maura Dolan is a former California-based legal affairs writer for the Los Angeles Times. She covered the California Supreme Court and the U.S. 9th Circuit Court of Appeals. A California native, she graduated from UC Berkeley and has worked in Washington and Los Angeles for The Times.

# **EXHIBIT 6**

(Foreclosure Complaint lacking Lien and Property)

1 6859.0009/CI-ELO 0141-01  
2 JAMES A. JUDGE (S.B.N. 122227)  
3 FLORA CAMAJ (S.B.N. 257141)  
4 THE JUDGE LAW FIRM,  
5 A Law Corporation  
6 19900 MacArthur Boulevard, Suite 500  
7 Irvine, California 92612  
8 Telephone: (949) 833-8633  
9 Fax: (949) 833-0154

03 DEC 29 4:10:38  
mlk  
CLEVELAND SUPERIOR COURT  
SAN DIEGO COUNTY, CA

10 Attorney for Plaintiff, CIELO  
11 HOMEOWNERS ASSOCIATION, a  
12 Mutual Benefit Nonprofit Corporation

13 SUPERIOR COURT OF CALIFORNIA

14 COUNTY OF SAN DIEGO : North County Division Judicial District

15 CIELO HOMEOWNERS ASSOCIATION, a  
16 Mutual Benefit Nonprofit Corporation

CASE NO. 37-2009-00063244-CL-OR-NC

17 Plaintiff,

COMPLAINT:  
(1) TO FORECLOSE REAL  
PROPERTY ASSESSMENT LIEN  
(2) FOR DAMAGES FOR  
BREACH OF COVENANT

18 vs.

19 PAMELA BENNET, and DOES 1 through 20,  
20 inclusive,

(VERIFIED)

21 Defendants.

22 Plaintiff alleges:

23 **FIRST CAUSE OF ACTION**  
24 **(Foreclosure of Real Property Assessment Lien)**

25 1. At all material times, plaintiff, Cielo Homeowners Association, was a  
26 mutual benefit nonprofit corporation qualified to do business in California.

27 2. Plaintiff does not know the true names of the defendants sued herein as  
DOES 1 through 20, inclusive.

28 3. The real property which is the subject of this action is situated in North  
County Division Judicial District, SAN DIEGO County, California, and is more particularly  
described in Exhibit "A" attached hereto, and by this reference incorporated herein, ("Subject  
Property").

THE JUDGE LAW FIRM, A Law Corporation  
19900 MacArthur Blvd., Suite 500  
Irvine, California 92612  
Telephone: (949) 833-8633  
Fax: (949) 833-0154

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4. Defendants are the owners of Subject Property, and when defendants acquired and accepted Subject Property it was subject to all of the terms and provisions of that certain Declaration of Covenants, Conditions and Restrictions which was recorded in the Office of the County Recorder of SAN DIEGO County, on June 23, 2000, as Instrument number 2000-0332969 ("Declaration").

5. Defendants entered into the purchase and acquisition of Subject Property with both actual and constructive knowledge of all of the terms and provisions of the Declaration.

6. The Declaration provides, among other things, for assessments to be paid by defendants to plaintiff in the amounts set forth in the Declaration or established pursuant thereto, as well as interest, costs, late charges, and reasonable attorney's fees, and further provides that all such amounts are and shall be a lien upon Subject Property.

7. Plaintiff has not consented to the breach of any of the terms and provisions of the Declaration, and the same have not been cancelled or withdrawn, and each and every one thereof is, and at all material times was, in full force and effect. Plaintiff, Cielo Homeowners Association, has duly performed the conditions, if any, to be performed by it under the terms of the Declaration and applicable statutory and common law.

8. Defendants have failed to pay the regular maintenance, special, capital improvement, reimbursement, and other assessments duly levied and owe \$10,429.93, all of which is thirty (30) days past due, as of December 14, 2009, presently payable and unpaid. Defendants have failed to make payments on account thereof, and continue to fail and refuse to do so although demand has been made. The principal amount of said indebtedness includes monthly assessments and is accruing and increasing at the rate of \$545.00 per month on the first day of each month from and after December 14, 2009, and at the rate of \$54.50 per month in late charges, plus interest at the rate of 12.00 percent per annum. Plaintiff is informed and believes and thereon alleges that the regular assessments will be increased, and that additional special, capital improvement, reimbursement and other assessments will be levied prior to the entry of judgment herein in amounts which cannot be presently ascertained. When the full amount is finally determined, plaintiff will amend this complaint accordingly or according to proof.

SECOND CAUSE OF ACTION

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**(Damages for Breach of Covenant)**

9. Plaintiff refers to and incorporates herein by this reference each and every allegation contained in Paragraphs 1 through 8, inclusive, of the First Cause of Action.

10. The Declaration further provides that the assessments levied by plaintiff are the personal obligation of defendants, and defendants, and each of them, are personally liable for the amounts hereinabove set forth, except to the extent that any such personal liability shall, prior to the entry of Judgment, have been determined to have been discharged under the applicable provisions of the Bankruptcy Code (11 United States Code, §101, et seq.).

WHEREFORE, Plaintiff prays judgment against defendants, and each of them, as follows:

**FIRST CAUSE OF ACTION**

1. The Court decree that Subject Property is encumbered by a mortgage in favor of plaintiff in the principal sum of \$10,429.93, with interest thereon at the rate of rate of 12.00 percent per annum from December 14, 2009, plus reasonable attorney's fees and costs according to proof, and that this amount be supplemented and increased at the rate of \$545.00 per month from December 14, 2009, to the date of judgment, and at the rate of \$54.50 per month in late charges or such other sum as may be rightfully assessed by plaintiff prior to entry of judgment herein, for a total amount according to proof.

2. The Court decree that the equitable mortgage referred to herein be foreclosed and that the usual decree may be made for the sale of Subject Property by the Sheriff or Marshal of SAN DIEGO County, California, according to law and practice of this Court; that the proceeds of the sale be applied to the payment of the expenses of the sale and next to the amount due plaintiff; and that the balance remaining, if any, be paid over to defendants; and that defendants, and all persons claiming under them, be foreclosed of all equity of redemption or interest in said Subject Property or any part thereof.

3. Plaintiff shall recover from defendants personally, any deficiency between the sales price and the total amount due plaintiff from defendants together with the expenses of the sale, should such deficiency exist, except to the extent that any such personal

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19900 MacArthur Blvd., Suite 500  
Irvine, California 92612  
Telephone: (949) 833-8633  
Fax: (949) 833-0154

1 ~~liability shall, prior to the entry of Judgment, have been determined to have been discharged~~  
2 under the applicable provisions of the Bankruptcy Code (11 United States Code, §101, et seq.).

3 4. Plaintiff or any other party to this suit may become a purchaser at the sale  
4 and that the Sheriff or Marshal execute a deed to such purchaser, and that the purchaser be let  
5 into possession of the premises on production of the Sheriff's or Marshal's deed.

6 **SECOND CAUSE OF ACTION**

7  
8 5. For damages in the principal sum of \$10,429.93, with interest thereon at  
9 the rate of rate of 12.00 percent per annum from December 14, 2009, plus reasonable attorney's  
10 fees and costs according to proof, and that this amount be supplemented and increased at the  
11 rate of \$545.00 per month from December 14, 2009, to the date of judgment, and at the rate of  
12 \$54.50 per month in late charges or such other sum as may be rightfully assessed by plaintiff  
13 prior to entry of judgment herein, for a total amount according to proof, except to the extent that  
14 any such damages shall, prior to the entry of Judgment, have been determined to have been  
15 discharged under the applicable provisions of the Bankruptcy Code (11 United States Code,  
16 §101, et seq.).

17 **ALL CAUSES OF ACTION**

- 18 6. For an award of attorney's fees.  
19 7. For costs of suit.  
20 8. For such other relief as may be just and proper.  
21

22 Dated: December 14, 2009

23 THE JUDGE LAW FIRM  
24 A Law Corporation

25  
26  
27 James A. Judge, Esq. (S.B.N. 122227)  
Flora Camaj, Esq. (S.B.N. 257141)  
Attorney for Plaintiff

THE JUDGE LAW FIRM, A Law Corporation  
19900 MacArthur Blvd., Suite 500  
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6859.0009/CI-ELO 0141-01

**EXHIBIT "A"**

PARCEL A:

LOT 104 OF SECOND AMENDED MAP OF COUNTY OF SAN DIEGO TRACT NO. 4227-2, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 14015, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, AUGUST 4, 2000.

COMMONLY KNOWN AS: 8129 VIA LUNA, RANCHO SANTA FE, CA 92067

APN# 265-492-65-00

THE JUDGE LAW FIRM, A Law Corporation  
19900 MacArthur Blvd., Suite 500  
Irvine, California 92612  
Telephone: (949) 833-8633  
Fax: (949) 833-0154


1 6859.0009/CI-ELO 0141-01

2  
3 **VERIFICATION**

4  
5 I am the authorized agent for plaintiff, Cielo Homeowners Association. I have read the  
6 foregoing Complaint to Foreclose Real Property Assessment Lien and for Damages for Breach  
7 of Covenant, and know the contents thereof. I am informed and believe the matters therein to be  
8 true and on that ground allege that the matters stated therein are true.  
9

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

12  
13 Executed on December 14, 2009, at Irvine, California.

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17 James A. Judge, Esq. (S.B.N. 122227)  
18 Flora Camaj, Esq. (S.B.N. 257141)

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24 THE JUDGE LAW FIRM, A Law Corporation  
19900 MacArthur Blvd., Suite 500  
Irvine, California 92612  
Telephone: (949) 833-8633  
Fax: (949) 833-0154

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Complaint

ER0224

# EXHIBIT 7

(Summon proves Pamela Bennett (two "t"s) not ordered to Court)

6859.0009

**SUMMONS  
(CITACION JUDICIAL)**

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)  
09 DEC 28 AM 10:38

(13)  
CLERK-SUPERIOR COURT  
SAN DIEGO COUNTY, CA

**NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):**

PAMELA BENNET, and DOES 1 through 20, inclusive,

**YOU ARE BEING SUED BY PLAINTIFF:**

**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

CIELO HOMEOWNERS ASSOCIATION, a Mutual Benefit Nonprofit Corporation

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. ¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que te entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):  
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO  
NORTH COUNTY REGIONAL CENTER  
325 SOUTH MELROSE, VISTA, CA 92081

CASE NUMBER:  
(Número del caso) 37-2009-00063244-CL-OR-NC

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
JAMES A. JUDGE (Bar # 122227) Fax No.: (949) 833-0154  
THE JUDGE LAW FIRM, A LAW CORPORATION, 19900 MACARTHUR BLVD., STE. 500, IRVINE, CA 92612 Phone No.: (949) 833-8633

DATE: DEC 28 2009  
(Fecha)

Clerk, by DE HACKETT, Deputy  
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



**NOTICE TO THE PERSON SERVED: You are served**

- 1.  as an individual defendant.
- 2.  as the person sued under the fictitious name of (specify):

3.  on behalf of (specify):

- under:  CCP 416.10 (corporation)  CCP 416.60 (minor)
- CCP 416.20 (defunct corporation)  CCP 416.70 (conservatee)
- CCP 416.40 (association or partnership)  CCP 416.90 (authorized person)
- other (specify):

4.  by personal delivery on (date):

R/25/10

# **EXHIBIT 8**

(Proof of Service proves service was on Pamela Bennet (one “t”))

000014  
FOR COURT USE ONLY

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State, number, and address): James A. Judge SBN 12227 The Judge Law Firm 19900 MacArthur Blvd., #500 Irvine, CA 92612 TELEPHONE NO.: (949) 833-8633 FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Cielo Homeowners Association	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS 325 S. Melrose Drive MAILING ADDRESS 325 S. Melrose Drive CITY AND ZIP CODE Vista, CA 92803 BRANCH NAME North County Regional Center	
PETITIONER/PLAINTIFF: Cielo Homeowners Association RESPONDENT/DEFENDANT: <b>Pamela Bennet</b>	CASE NUMBER 37-2009-00063244-CL-OR-NC Ref. No. or File No. 6859.0009 / 10-300
<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): Exhibits; Notice of Case Assignment

3. a. Party served (specify name of party as shown on documents served): **Pamela Bennet**

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):

4. Address where the party was served:

8129 Via Luna, Rancho Santa Fe, CA 92067 (Home)

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): 2/25/10 (2) at (time): 11:00 a.m.
- 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 3b):

- (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.

PETITIONER/PLAINTIFF: Cielo Homeowners Association

CASE NUMBER

37-2009-00063244-CL-OR-NC

RESPONDENT/DEFENDANT: Pamela Bennet

c.  by mail and acknowledgment of receipt of service. I mailed the documents listed in item 2 to the party, to the address shown in item 4, by first-class mail, postage prepaid.

(1) on (date): (2) from (city):

(3)  with two copies of the Notice and Acknowledgment of Receipt (form 982(a)(4)) and a postage-paid return envelope addressed to me. (Attach completed Notice and Acknowledgement of Receipt (form 982(a)(4).) (Code Civ. Proc., § 415.30.)

(4)  to an address outside California with return receipt requested. (Code Civ. Proc., § 415.40.)

d.  by other means (specify means of service and authorizing code section):

Additional page describing service is attached.

6. The "Notice to the Person Served" (on the summons) was completed as follows:

a.  as an individual defendant.

b.  as the person sued under the fictitious name of (specify):

c.  On behalf of (specify):

under the following Code of Civil Procedure section:

- 416.10 (corporation)
- 416.20 (defunct corporation)
- 416.30 (joint stock company/association)
- 416.40 (association or partnership)
- 416.50 (public entity)
- 415.95 (business organization, form unknown)
- 416.60 (minor)
- 416.70 (ward or conservatee)
- 416.90 (authorized person)
- 415.46 (occupant)
- other:

7. Person who served papers

a. Name: D. Robertson c/o Richard Barr Investigations-CA#P17393

b. Address: 27762 "L1" Antonio Parkway, #605, Ladera Ranch, CA 92694

c. Telephone number: (949) 218-7021; Fax: (949) 218-7023

d. The fee for service was: \$ 100.00 per hourly billing statement. Recoverable costs for Locate, Surveillance, Service of Process, per CCP 1033.5A 4B.

e. I am:

- (1)  not a registered California process server.
- (2)  exempt from registration under Business and Professions Code section 22350(b).
- (3)  registered California process server:
  - (i)  Employee or independent contractor.
  - (ii) Registration No.: 310
  - (iii) County: San Bernardino

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

or

9.  I am a California sheriff or marshal and I certify that the foregoing is true and correct.

Date: February 25, 2010

D. Robertson

(NAME OF PERSON WHO SERVED PAPERS/SHERIFF OR MARSHAL)

(SIGNATURE)

# EXHIBIT 9

(Certificate of Service)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): <b>James A. Judge (Bar No. 122227), Flora Camaj (Bar. No. 257141)</b> <b>THE JUDGE LAW FIRM, A LAW CORPORATION</b> <b>19900 MACARTHUR BLVD., STE. 500</b> <b>IRVINE, CA 92612</b> 6859.0009 TELEPHONE NO. (Optional): (949) 833-8633 FAX NO. (Optional): (949) 833-0154 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): <b>PLAINTIFF</b>	<b>FOR COURT USE ONLY</b> 18 MAR 15 7:18 AM CLERK - SUPERIOR COURT 325 S. MELROSE DR. VISTA, CA
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO</b> <input type="checkbox"/> HALL OF JUSTICE, 330 W. BROADWAY, SAN DIEGO, CA 92101-3827 <input checked="" type="checkbox"/> NORTH COUNTY DIVISION, 325 S. MELROSE DR., VISTA, CA 92081-6643 <input type="checkbox"/> EAST COUNTY DIVISION, 250 E. MAIN ST., EL CAJON, CA 92020-3941 <input type="checkbox"/> RAMONA BRANCH, 1428 MONTECITO RD., RAMONA, CA 92065-5200 <input type="checkbox"/> SOUTH COUNTY DIVISION, 500 3RD AVE., CHULA VISTA, CA 91910-5649	
PLAINTIFF(S) <b>Cielo Homeowners Association</b>	JUDGE: _____
DEFENDANT(S) <b>Pamela Bennet</b>	DEPT: _____
<b>CERTIFICATE OF SERVICE</b> <b>(San Diego Superior Court Rules, Division II, Rule 2.5)</b>	CASE NUMBER <b>37-2009-00063244-CL-OR-NC</b>

I certify under penalty of perjury under the laws of the State of California that all defendants named in the complaint of the above-entitled case have either made a general appearance or have been properly and timely served in compliance with San Diego Superior Court Rules, Division II, Rule 2.5.

Date: 03-10-10

Signature \_\_\_\_\_

**James A. Judge, Esq.**

Typed or printed name

**NOTES:**

If service cannot be effected on all defendants within 60 days of filing the complaint, DO NOT USE THIS CERTIFICATE, but file the form CERTIFICATE OF PROGRESS (SDSC CIV-144) stating the reasons why service has not been effected on all parties and what is being done to effect service.

THE FILING OF A GENERAL APPEARANCE BY A DEFENDANT DOES NOT DISPENSE WITH THE PLAINTIFF'S OBLIGATION TO FILE THIS DOCUMENT.

# **EXHIBIT 10**

(Trustees Deed proves Property and its' associated lien were eliminated)

LANDSAFE TITLE  
RECORDING REQUESTED BY  
~~RECONTRUST COMPANY, N.A.~~  
AND WHEN RECORDED MAIL TO:  
RECONTRUST COMPANY, N.A.  
1800 Tapo Canyon Rd., CA6-914-01-94  
SIMI VALLEY, CA 93063

Forward Tax Statements to Address listed above

76  
49

DOC # 2012-0444938



JUL 31, 2012 8:00 AM

OFFICIAL RECORDS  
SAN DIEGO COUNTY RECORDER'S OFFICE  
Ernest J. Dronenburg, Jr., COUNTY RECORDER

FEES: 24.00  
OC: OC

15878

PAGES: 4



SPACE ABOVE THIS LINE FOR RECORDER'S USE

TS No. 09-0178646

Title Order No. 09-8-566993

**TRUSTEE'S DEED UPON SALE**

APN# 265-492-65-00

TRANSFER TAX: \$ 8

The Grantee herein was the beneficiary  
The amount of the unpaid debt was \$ 2,900,847.62  
The amount paid by the Grantee was \$ 1,775,000.00  
The property is in the city of RANCHO SANTA FE, County of SAN DIEGO

RECONTRUST COMPANY, N.A., as the duly appointed Trustee (or successor Trustee or substituted Trustee), under a Deed of Trust referred to below, and herein called "Trustee", does hereby grant without covenant or warranty to:

BANK OF AMERICA, N.A. FOR THE BENEFIT OF DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE FOR HOLDERS OF THE GSR MORTGAGE LOAN TRUST 2007-OA1

herein called Grantee, the following described real property situated in SAN DIEGO County, California:

SEE ATTACHED LEGAL DESCRIPTION

This conveyance is made pursuant to the powers conferred upon Trustee by the Deed of Trust executed by PAMELA BENNETT, A MARRIED WOMAN AS HER SOLE AND SEPARATE PROPERTY, as Trustor, recorded on 03/02/2007, Instrument Number 2007-0143250 ( or Book , Page 4327) Official Records in the Office of the County Recorder of SAN DIEGO County.

All requirements of law regarding the recording and mailing of copies of the Notice of Default and Election to Sell, and the recording, mailing, posting, and publication of the Notice of Trustee's Sale have been complied with.

15879

TS No. 09-0178646

Title Order No. 09-8-566993

Trustee, in compliance with said Notice of Trustee's Sale and in exercise of its power under said Deed of Trust sold said real property at public auction on 07/23/2012. Grantee, being highest bidder at said sale became the purchaser of said property for the amount bid, which amount was \$ 1,775,000.00.

DATE: JUL 26 2012

RECONTRUST COMPANY, N.A.

JUL 26 2012  
BY: [Signature]  
Christina Balandran Assistant Vice President

State of California

County of VENTURA

On JUL 26 2012 before me, JEANINE HOFFMAN, Notary Public (insert name and title of the officer) personally appeared Christina Balandran, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Signature] (Seal)  
JEANINE HOFFMAN

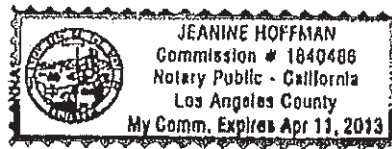


EXHIBIT A

15880

LEGAL DESCRIPTION

REF. NO. 09-178646

PARCEL A:

LOT 104 OF SECOND AMENDED MAP OF COUNTY OF SAN DIEGO TRACT NO. 4227-2, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 14015, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, AUGUST 4, 2000.

EXCEPT THEREFROM ALL OIL, GAS, MINERALS, AND OTHER HYDROCARBON SUBSTANCES LYING BELOW THE SURFACE OF SAID LAND, BUT WITH NO RIGHT OF SURFACE ENTRY, AS PROVIDED IN DEEDS OF RECORD.

PARCEL B:

AN EASEMENT AND RIGHT OF WAY FOR INGRESS AND EGRESS, ROAD AND UTILITY PURPOSES, INCLUDING BUT NOT LIMITED TO ELECTRIC POWER, TELEPHONE, GAS, WATER, SEWER AND CABLE TELEVISION LINES AND APPURTENANCES THERETO, OVER, UNDER, ALONG AND ACROSS LOTS 131, 132, 133, AND 134 OF SECOND AMENDED MAP OF COUNTY OF SAN DIEGO TRACT 4227-2, ACCORDING TO THE MAP THEREOF NO. 14015.

PARCEL C:

AN EASEMENT AND RIGHT OF WAY FOR INGRESS AND EGRESS, ROAD AND UTILITY PURPOSES, INCLUDING BUT NOT LIMITED TO ELECTRIC POWER, TELEPHONE, GAS, WATER, SEWER AND CABLE TELEVISION LINES AND APPURTENANCES THERETO, OVER, UNDER, ALONG AND ACROSS LOT 75 OF SECOND AMENDED MAP OF COUNTY OF SAN DIEGO TRACT 4227-1, ACCORDING TO THE MAP THEREOF NO. 14015.

PARCEL D:

AN EASEMENT AND RIGHT OF WAY FOR INGRESS AND EGRESS, ROAD AND UTILITY PURPOSES, INCLUDING BUT NOT LIMITED TO ELECTRIC POWER, TELEPHONE, GAS, WATER, SEWER AND CABLE TELEVISION LINES AND APPURTENANCES THERETO, OVER, UNDER, ALONG AND ACROSS THAT PORTION OF CALLE AMBIENTE, AS DEDICATED AND SHOWN ON SECOND AMENDED MAP OF COUNTY OF SAN DIEGO TRACT NO. 4227-1, ACCORDING TO THE MAP THEREOF NO. 14015 IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

ALL THAT PORTION OF CALLE AMBIENTE AS SO DEDICATED, PORTIONS OF WHICH WERE SUBSEQUENTLY VACATED BY RESOLUTION OF THE BOARD OF SUPERVISORS OF SAN DIEGO COUNTY, RECORDED FEBRUARY 17, 1999 AS FILE NO. 1999-0095131 OF OFFICIAL RECORDS, LYING WITHIN THE AREA DESCRIBED AS PARCEL 1 OF ACCESS AND DRAINAGE DOCUMENT RECORDED ON FEBRUARY 1, 1999 AS FILE NO. 1999-0056430 OF OFFICIAL RECORDS, OF SAN DIEGO COUNTY.

TS # 09-178646

**EXHIBIT B**

15881

**Foreclosing Lender Contact Information**

**Lender Name:** BANK OF AMERICA, N.A. FOR THE BENEFIT OF DEUTSCHE BANK  
NATIONAL TRUST COMPANY, AS TRUSTEE FOR HOLDERS OF THE GSR MORTGAGE  
LOAN TRUST 2007-OA1

**Address:** 1800 Tapo Canyon Rd. Simi Valley Ca. 93063

**Telephone:** 1-800-281-8219

**Email Address:** rt.ca.email.database@recontrustco.com

**Authorized Representative Name:** Recontrust Company N.A.

TS # 09-178646

# **EXHIBIT 11**

(Stern's Judgment against Pamela Bennett (two "t"s) not named nor served)

6859.0009/CI-ELO 0141-01  
JAMES A. JUDGE, Esq. (S.B.N. 122227)  
DAVID MANGIKYAN Esq. (S.B.N. 312021)  
THE JUDGE LAW FIRM, ALC  
18881 Von Karman Ave., Suite 1500  
Irvine, California 92612  
Telephone: (949) 833-8633  
Fax: (949) 833-0154

**FILED**  
Clerk of the Superior Court

SEP 16 2019

By: M. Garland

Attorney for Plaintiff,  
CIELO HOMEOWNERS  
ASSOCIATION

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN DIEGO : NORTH COUNTY DIVISION JUDICIAL DISTRICT

CIELO HOMEOWNERS ASSOCIATION, a  
Nonprofit Mutual Benefit Corporation

CASE NO. 37-2009-00063244

Plaintiff,

<sup>mg</sup>  
~~PROPOSED~~ JUDGMENT

vs.

PAMELA BENNETT,

Defendant.

Complaint Filed: December 28, 2009

This cause came regularly for trial on September 6, 2019 in Department N-27 of the above-entitled Court, the Honorable Jacqueline M. Stern, Judge Presiding. Plaintiff appeared by its attorneys, James A. Judge and David Mangikyan, and Defendant, Pamela Bennett, failed to appear. Defendant, Pamela Bennett's default has been duly entered.

Evidence was introduced on behalf of Plaintiff, Cielo Homeowners Association, a Nonprofit Mutual Benefit Corporation under California Code of Civil Procedure Section 585(d), and from proof made to the satisfaction of the Court, the Court finds that all of the allegations of the complaint are true and that the relief prayed for should be granted.

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///

///

THE JUDGE LAW FIRM, A Law Corporation  
18881 Von Karman Ave., Suite 1500  
Irvine, California 92612  
Telephone: (949) 833-8633  
Fax: (949) 833-0154

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IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

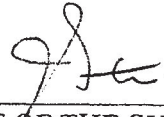
1. Plaintiff, Cielo Homeowners Association, a Nonprofit Mutual Benefit Corporation have judgment by default which may be enforced by money judgment against Defendant, Pamela Bennett.

2. Plaintiff recovers from Defendant, Pamela Bennett the following sums:

- A. Principal from June 1, 2011 through July 31, 2012 in the amount of \$32,836.14;
- B. Pre-Judgment interest in the amount of \$27,018.16;
- C. Attorney's fees in the amount of \$19,710.00; and
- D. Plaintiff's costs and disbursements in the amount of \$1,743.05;

For a total amount of \$81,307.35.

Dated: 9/16/15



JUDGE OF THE SUPERIOR COURT

Jacqueline M. Stern

THE JUDGE LAW FIRM, A Law Corporation  
18881 Von Karman Ave., Suite 1500  
Irvine, California 92612  
Telephone: (949) 833-8633  
Fax: (949) 833-0154

# **EXHIBIT 12**

(Freeland's Judgment against Pamela Bennett (two "t"s) not named nor served)

6859.00009/CI-ELO 0141-01  
1 JAMES A. JUDGE (S.B.N. 122227)  
2 TERRY DALL (S.B.N. 151297)  
3 STEPHEN M. LEVINE (S.B.N. 136628)  
4 THE JUDGE LAW FIRM, A.L.C.  
5 300 Spectrum Center Drive, Suite 100  
6 Irvine, California 92618  
7 Telephone: (949) 833-8633  
8 Fax: (949) 833-0154

6 Attorney for Plaintiff,  
7 CIELO HOMEOWNERS  
8 ASSOCIATION

**FILED**  
Clerk of the Superior Court

MAY 15 2026

By: A. Carini

9 **SUPERIOR COURT OF CALIFORNIA**  
10 **COUNTY OF SAN DIEGO: NORTH COUNTY DIVISION**

11 CIELO HOMEOWNERS ASSOCIATION, a  
12 Mutual Nonprofit Benefit Corporation,

13 Plaintiff

14 vs.

15 PAMELA BENNETT,

16 Defendant.

CASE NO: 37-2009-00063244-CU-OR-NC  
Assigned to Honorable Cynthia Freeland

**[PROPOSED] JUDGMENT**

Date: May 15, 2026

Time: 1:30 PM

Dept.: N-27

Complaint Filed: December 28, 2009

17  
18 This cause came regularly for Trial on November 3, 2025, in Department N-27 of the  
19 above-entitled Court, the Honorable Cynthia Freeland, Judge Presiding, and the Court finds in  
20 favor of Plaintiff, Cielo Homeowners Association, a Mutual Nonprofit Benefit Corporation, and  
21 against Defendant, Pamela Bennett, in the principal amount of \$32,680.82, plus interest. A  
22 Memorandum of Costs was filed by Plaintiff on November 18, 2025, in the amount of \$7,585.74.

23 Thereafter, this matter came regularly on noticed motion by Plaintiff on May 15, 2026,  
24 for an Order for Reasonable Attorneys' Fees. After considering the papers and pleadings and  
25 being informed in the premises, the Court rules as follows:

26 Plaintiff's motion for attorneys' fees is granted.

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**IT IS ORDERED, ADJUDGED, AND DECREED** as follows:

There is now due and owing to Plaintiff, Cielo Homeowners Association, a Mutual Nonprofit Benefit Corporation from Defendant, Pamela **Bennett**, the following:

- Principal sum of \$32,680.82 (through July 31, 2012);
  - Interest accrued at 12% per annum in the sum of \$52,282.15;
  - Costs of \$7,585.74; and
  - Attorneys' fees of \$87,585.00.
- For a total judgment award of \$180,133.71.

GOOD CAUSE APPEARING, IT IS SO ORDERED.

Date: *May 15, 2026*

*Cynthia A. Freeland*

JUDGE OF THE SUPERIOR COURT

**CYNTHIA A. FREELAND**

THE JUDGE LAW FIRM, A Law Corporation  
300 Spectrum Center Dr., Ste. #100  
Irvine, California 92618  
Telephone: (949) 833-8633  
Fax: (949) 833-0154

# EXHIBIT 13

(Unanimous Appellate Panel held Pamela *Bennet* is the only Defendant)

Filed 1/13/21

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

CIELO HOMEOWNERS  
ASSOCIATION, INC.,

Plaintiff and Respondent,

v.

PAMELA BENNETT,

Defendant and Appellant.

D076824

(Super. Ct. No. 37-2009-  
00063244-CU-OR-NC )

APPEAL from a judgment of the Superior Court of San Diego County, Jacqueline M. Stern, Judge. Reversed; remanded with directions.

Pamela Bennett in pro. per., for Defendant and Appellant.

The Judge Law Firm, James A. Judge and David Mangikyan, for Plaintiff and Respondent.

After Pamela Bennett failed to appear at a trial readiness conference, the superior court set an order to show cause (OSC) regarding why Bennett's answer should not be stricken and default entered for failure to appear. The OSC was set for the same date as trial call. On that date, Bennett again

failed to appear. The court therefore struck the answer and found her in default.

The court ultimately entered judgment in favor of plaintiff Cielo Homeowners Association, Inc. (Cielo) in the amount of \$81,307.35, which included damages, prejudgment interest, attorney fees, and costs.

Bennett<sup>1</sup> appeals, raising several issues that challenge the judgment in one way or another.<sup>2</sup> For example, she argues her name is not spelled correctly in the complaint, and the court improperly allowed Cielo to amend the complaint. She asserts the amount of damages was improper. She also claims the operative complaint does not state any valid cause of action against her. Putting aside whether these issues are properly before us, they are subsumed by her challenge to the court's entry of default against her after she had filed an answer.

We agree that the default judgment against Bennett is void because the superior court lacked the authority to strike the answer and enter a default when she failed to appear for trial. (*Heidary v. Yadollahi* (2002) 99 Cal.App.4th 857, 859, 862-864 (*Heidary*)). We thus reverse the judgment and remand this matter with directions to vacate the judgment against Bennett

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<sup>1</sup> Bennett's husband, James, is listed as an appellant in the opening brief. Nonetheless, he is neither named as a defendant in the operative complaint nor named in the judgment. Based on our review of the record, James was never a party below. We did find a reference to a cross-complaint he attempted to file in the instant matter, but the court did not accept it. And there is no challenge in the opening brief regarding the court's refusal to accept the cross-complaint. James attempted to appear at multiple hearings, but the court indicated that he was not a party and because he was not a licensed attorney, he could not represent his wife. Based on this foundation, we conclude James lacks standing to appear in this appeal.

<sup>2</sup> Bennett is proceeding here as an in propria persona litigant.

and to set the matter for trial. As such, we need not reach Bennett's other challenges to the judgment.<sup>3</sup>

### FACTUAL AND PROCEDURAL BACKGROUND

In December 2009, Cielo filed a complaint against Pamela Bennet,<sup>4</sup> alleging two causes of action. The first cause of action was for foreclosure, based on a "mortgage" in the amount of \$10,429.93. The second cause of action sought damages in the same amount. The gravamen of the complaint was that the defendant, as owner of certain real property, was required to pay "regular maintenance, special, capital improvement, reimbursement, and other assessments" per the subject declaration of covenants, conditions, and restrictions but had not done so. As such, Cielo, the homeowner association, brought suit to foreclose on its lien or recover damages for the missed payments. Cielo also sought its costs, attorney fees, and interest.

Although the complaint named Pamela Bennet as the defendant, Bennett filed a demurrer to the complaint, arguing the court did not have jurisdiction to hear the dispute, the complaint failed to state a cause of action, and the complaint was uncertain. The court overruled the demurrer on June 18, 2010.

Bennett filed a motion for reconsideration, which the court denied on August 6, 2010. Bennett then filed an answer.

Apparently, realizing it had spelled Bennett's name incorrectly in the complaint, Cielo filed a form amendment to the complaint on September 27,

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<sup>3</sup> Although we do not reach Bennett's claim that the trial court erred in denying her motion to dismiss under Code of Civil Procedure section 583.310, we will briefly discuss that issue at the end of this opinion.

<sup>4</sup> This is not a typo. The complaint identified the defendant as Pamela Bennet.

2010. However, although it identified Bennett as the correct spelling of the defendant's last name, the form amendment did not amend the complaint to add Bennett as the correct defendant, but instead, listed "Pamela Bennet" as the proper defendant yet again.<sup>5</sup>

Then for reasons that are not sufficiently explained or described in any of the briefs, not much happened in this litigation for several years.<sup>6</sup> Instead, on June 28, 2019, Bennett filed a motion to dismiss, under Code of Civil Procedure section 583.310, for failure to bring the case to trial within five years after the action was commenced. Cielo opposed the motion, pointing out that Bennett had filed bankruptcy no fewer than five times while the subject litigation was pending. And during the pendency of those bankruptcy actions, Cielo could take no action in the instant matter. The court denied the motion to dismiss, finding that the instant matter was stayed for a total of 1,724 days due to Bennett's five bankruptcy filings.

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<sup>5</sup> We note this because it led to some confusion in the briefs before us. Despite the amendment appearing to not spell Bennett's name correctly, it does not appear that there was any confusion regarding who the actual defendant was. Bennett made an appearance to demur to the original complaint. Bennett is identified in the judgment. Also, it is clear that Cielo realized its mistake and tried to correct it through the form amendment. Unfortunately, its execution was poor.

<sup>6</sup> Bennett provides a statement of facts in her brief, but none of the facts discussed include any citation to the record. And these statement of facts read more like argument than a "summary of the significant facts limited to matters in the record." (See Cal. Rules of Court, rule 8.204(2)(C).) Yet, Bennett does provide citations to the record when she discusses the procedural history of this case. Cielo did not include a statement of facts or discussion of procedural background in the respondent's brief. Although a respondent's brief is not required to contain either section, they are often helpful to the court, especially in a case like this where the litigation spanned a decade and the appellant is proceeding in propria persona.

Thus, the court determined, with this additional time, Cielo had to bring the matter to trial by September 18, 2019. The court then scheduled a trial readiness conference for August 9, 2019, and trial for September 6, 2019.

Bennett did not appear at the August 9 trial readiness conference. Her husband, James, was present but the court informed him that he could not appear for his wife. The court then continued the trial readiness conference to the same date as the trial (September 6) and issued an OSC why the answer should not be stricken and a default entered against Bennett for failing to appear.

On September 6, 2019, Bennett did not appear for trial. The court therefore struck Bennett's answer and entered default against her.<sup>7</sup>

On September 16, 2019, to prove damages, Cielo filed declarations with attached exhibits in lieu of testimony under Code of Civil Procedure section 585, subdivision (d). Cielo also included a request for attorney fees and costs. On that same day, the court entered judgment in favor of Cielo and against Bennett in the total amount of \$81,307.35, consisting of: (1)

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<sup>7</sup> The court also made several other rulings in its September 6, 2019 minute order. For example, the court granted Cielo's motion to strike the cross-complaint filed by Bennett and James as well as Cielo's motion to strike an answer to the amended complaint filed by Bennett on August 28, 2019. The court then vacated dates of a demurrer and motion to strike hearing that were apparently filed by Bennett. The parties here have not explained the significance, if any, of these rulings. However, we note that the court's granting of Cielo's motion to strike the cross-complaint is somewhat confusing. It appears that Bennett and James filed a cross-complaint on August 28, 2019. Yet, before the September 6 trial date, the court told James on multiple occasions that the cross-complaint was improper and invalid. As such, there would have been no reason to strike it on September 6. Perhaps this confusion caused James to believe he should be a party to this appeal. That said, the opening brief does not challenge the court's refusal to accept the cross-complaint.

\$32,836.14 in damages, prejudgment interest in the amount of \$27,018.16, \$19,710 in attorney fees, and \$1,743.05 in costs.

Bennett timely appealed.

## DISCUSSION

The primary issue before us is whether the trial court exceeded its authority in striking Bennett’s answer and ordering default. As we explain, we conclude the trial court exceeded its authority and the judgment entered is void.

Code of Civil Procedure section 594, subdivision (a), provides, “In superior courts either party may bring an issue to trial or to a hearing, and, in the absence of the adverse party, unless the court, for good cause, otherwise directs, may proceed with the case and take a dismissal of the action, or a verdict, or judgment, as the case may require; provided, however, if the issue to be tried is an issue of fact, proof shall first be made to the satisfaction of the court that the adverse party has had 15 days’ notice of such trial . . . . If the adverse party has served notice of trial upon the party seeking the dismissal, verdict, or judgment at least five days prior to the trial, the adverse party shall be deemed to have had notice.”

Our analysis is guided by *Wilson v. Goldman* (1969) 274 Cal.App.2d 573 (*Wilson*) and *Heidary, supra*, 99 Cal.App.4th 857. We will begin with *Wilson* because that case was cited extensively in *Heidary*.

In *Wilson*, the defendant filed an answer to the complaint that placed both liability and damages at issue. (*Wilson, supra*, 274 Cal.App.2d at p. 575.) The case was set for trial and the defendant’s counsel was properly served with notice of the trial. But neither the defendant nor his attorney appeared when the case was called for trial. (*Ibid.*) The court granted the plaintiffs’ motion to enter default against the defendant. (*Id.* at p. 576.)

After the plaintiffs' counsel indicated " 'he would wait to prove up damages at some future date,' " no trial was held, no evidence was taken, and "no continuance was granted." (*Ibid.*)

More than three months later, the plaintiffs' counsel filed a memorandum requesting the case be placed on calendar for a hearing to prove up the damages. (*Wilson, supra*, 274 Cal.App.2d at p. 576.) The clerk set the matter for a hearing. The defendant and his attorney were not served with the memorandum or notice of the hearing. (*Ibid.*) The hearing was held in the absence of the defendant and his attorney and resulted in a \$40,000 default judgment against the defendant. (*Ibid.*) The judgment was signed by the court the day after the hearing and entered by the clerk the day after that. (*Ibid.*) The defendant later moved to set aside the default under Code of Civil Procedure section 473 based on his counsel's affidavit explaining that counsel was hospitalized on the trial date having undergone major surgery only days before. (*Wilson*, at p. 575.) After the court granted the motion, the plaintiffs appealed. (*Ibid.*)

The Court of Appeal affirmed the order setting aside the entry of default and the default judgment but not based on the attorney's affidavit. (*Wilson, supra*, 274 Cal.App.2d at p. 575.) Rather, the appellate court concluded the record "conclusively demonstrate[d] both the entry of the default and default judgment are void and in excess of the court's power and jurisdiction . . . ." (*Ibid.*) The appellate court explained that a trial court does not have authority under Code of Civil Procedure section 585 to enter a default where an answer is on file, even if the defendant fails to appear for trial. (*Wilson*, at p. 576.) "Where the defendant who has answered fails to appear for trial 'the plaintiff's sole remedy is to move the court to proceed with the trial and introduce whatever testimony there may be to sustain the

plaintiff's cause of action.' [Citation.] In such case a plaintiff is entitled to proceed under the provisions of Code of Civil Procedure, section 594, subdivision [a], and he may do so in the absence of the defendant provided the defendant has been given at least [15] days' notice of the trial.

Section 594 does not authorize the entry of the default in the event the defendant fails to appear, and a hearing held pursuant to that section under such circumstances is uncontested as distinguished from a default hearing.

[Citations.] [¶] Where a defendant has filed an answer, neither the clerk nor the court has the power to enter a default based upon the defendant's failure to appear at trial, and a default entered after the answer has been filed is void [citations], and is subject to expungment at any time either by motion made pursuant to Code of Civil Procedure, section 473 or by virtue of the court's inherent power to vacate a judgment or order void on its face."

(*Wilson*, at pp. 576-577.)

Addressing the situation before it, the appellate court explained what went wrong and where. The first error occurred when the court granted plaintiffs' motion to enter defendant's default, after the plaintiffs decided not to proceed to trial on the date set for trial and for which the defendant had received notice. (*Wilson*, *supra*, 274 Cal.App.2d at p. 577.) The court did not have "the power and authority" to do so because defendant had filed an answer. (*Ibid.*) The plaintiffs then waited some five months after the trial date to present evidence concerning liability and damages but did not give defendant notice of the hearing. When that trial took place, the "defendant was not in default and was entitled to notice of the hearing as provided in [Code of Civil Procedure section 594, subdivision (a)]." (*Wilson*, at p. 577.) The failure to give the defendant notice of the hearing, which resulted in the default judgment against him, was the second error. The court illuminated:

“[A] void ‘entry of default’ cannot excuse compliance with Code of Civil Procedure, section 594, subdivision [a]” and “[a] judgment made after a trial held without the notice prescribed by Code of Civil Procedure, section 594, subdivision [a] is not merely error; it is an act in excess of the court’s jurisdiction.” (*Wilson*, at p. 577.) The court concluded the judgment was subject to attack under Code of Civil Procedure section 473 and “subject to collateral attack at any time.” (*Wilson*, at p. 578.)

When presented with a similar situation in *Heidary, supra*, 99 Cal.App.4th 857, the appellate court relied extensively on *Wilson, supra*, 274 Cal.App.2d 573. (*Heidary*, at pp. 862-864.) In *Heidary*, the cross-defendants answered the cross-complaint but were not provided notice of continuance of the trial date. (*Id.* at p. 860.) When they failed to appear for trial, the court struck their answers to the cross-complaint and ordered “their defaults entered” for failing to appear at trial. (*Ibid.*) The court continued the trial date. (*Ibid.*) The next day, the cross-complainants filed a request for entry of default with the clerk, serving a copy on the cross-defendants by mail. The clerk entered the default that day. (*Ibid.*) About a month later, an ex parte application for entry of judgment based on the defaults was filed by the cross-complainants, requesting over \$900,000 in total damages. (*Id.* at pp. 860-861.) The cross-defendants were not served with any of the documents supporting the entry of the judgment and it would have made little difference if they had been because the judgment was entered the same day the documents were filed for the exact amount requested. (*Id.* at p. 861.)

More than a year later, the cross-defendants became aware of the judgment entered against them and filed a motion to vacate the judgment, arguing it was void because they had not received notice of the trial and the court therefore lacked the power to enter their defaults. (*Heidary, supra*,

99 Cal.App.4th at p. 861.) The court denied the motion. (*Ibid.*) On appeal, the appellate court concluded the judgment was void on its face, reversed it, and remanded with directions to vacate the entry of defaults and the default judgment. (*Id.* at pp. 862, 868.) In reaching this conclusion, the court applied the reasoning in *Wilson, supra*, 274 Cal.App.2d 573. (*Heidary*, at pp. 862-864.) The appellate court explained, as in *Wilson*, “the court had no power to enter appellants’ default when they failed to appear for trial.” (*Id.* at p. 864.) “[T]he court’s only options when they did not appear were to proceed with the trial in their absence, or to continue the trial.” (*Ibid.*) Instead, the court entered the cross-defendants’ default and continued the matter to allow the cross-complainants to put on proof of damages on a later date. (*Ibid.*) The appellate court explained that the cross-defendants therefore “were entitled to notice of what amounted to a continued trial date” and because they did not receive such notice, the judgment against them was void. (*Ibid.*)

*Wilson* and *Heidary* guide us to the conclusion that here, because Bennett had filed an answer, Code of Civil Procedure section 594, subdivision (a) precluded entry of her default when she failed to appear for trial. In its order, the trial court struck Bennett’s answer and entered default. The court also directed “counsel for the plaintiff to file the Default Judgment packet directly in Department 27.” Thus, it is clear the court was entering default judgment against Bennett under Code of Civil Procedure section 585. That section “is the general statutory authority for default judgments. It provides that ‘[j]udgment may be had, if the defendant fails to answer the complaint, as follows: . . . .’ It then goes on to specify the procedures for obtaining a default in cases where the defendant failed to file an answer or other appropriate response within the time specified in the

summons.” (*Heidary, supra*, 99 Cal.App.4th at p. 863, fn. 4.) But here, Bennett had filed an answer. By doing so, she placed in issue both her liability and the amount of damages, and the court had no authority to strike her answer and enter her default when she failed to appear for trial. (*Wilson, supra*, 274 Cal.App.2d at p. 576.) When she failed to appear for trial, Cielo’s “sole remedy” was “to move the court to proceed with the trial and introduce whatever testimony there may be to sustain [its] cause of action.” (*Ibid.*) Or the court could continue the matter. (*Heidary*, at p. 859.)

In addition, the fact that the court set an OSC why it should not strike Bennett’s answer and enter default does not change our analysis here. The court did not have authority to strike the answer on the date set for trial simply because Bennett did not appear. (See *Wilson, supra*, 274 Cal.App.2d at p. 576; *Heidary, supra*, 99 Cal.App.4th at p. 864.) Setting an OSC cannot bestow authority on the trial court that it does not have.

Moreover, we are not persuaded by Cielo’s arguments to the contrary. It claims that *Sigala v. Anaheim City School Dist.* (1993) 15 Cal.App.4th 661 and *Evarone v. Twentieth Century Hosts, Inc.* (1979) 98 Cal.App.3d 90 support the striking of the answer and entry of default. Yet, Cielo does no more than offer this bare conclusion about these cases. It does not discuss those cases or even provide us with pin cites to support its proposition. A cursory review of those cases shows that neither one addressed the issue of striking an answer and entering a default judgment based on a defendant’s failure to appear at trial.

Additionally, Cielo claims the court was authorized to strike the answer and enter default judgment under Rule 2.5.12 of the Local Rules Superior Court of California County of San Diego. Rule 2.5.12(A) provides:

“If any counsel, a party represented by counsel, or a party in pro per, fails to comply with any of the

requirements of Division II of the San Diego Superior Court Rules, the court, on a motion of a party or on its own motion, may strike all or any part of any pleadings of that party; or dismiss the action or proceeding or any part thereof; or enter a judgment by default against that party; or impose other penalties of a lesser nature or otherwise provided by law; and may order that party or his or her counsel to pay to the moving party the reasonable expenses in making the motion, including reasonable attorney fees.”

Here, Cielo does not explain which requirement of Division II Bennett violated and why, under those circumstances, the court could strike the answer and enter default. Moreover, even if we were to interpret Rule 2.5.12 to authorize a trial court to strike an answer and enter default when a defendant does not appear at trial, we would find this rule to be inconsistent with clear case law and thus not applicable here. Local rules may not be adopted that conflict with statute or case law. (See Gov. Code, § 68070; *People v. Cobb* (1983) 139 Cal.App.3d 578, 590-591; cf. *Rutherford v. Owens-Illinois, Inc.* (1997) 16 Cal.4th 953, 967 [“ ‘trial judges have no authority to issue courtroom local rules which conflict with any statute’ or are ‘inconsistent with law’ ”].)

Finally, Cielo insists it does not matter if the court did not have authority to strike the answer and enter default because, “for all practical purposes, the outcome was the same.” Cielo’s argument misses the mark. It is axiomatic that a court cannot act beyond its authority. Here, the court did not have authority to strike the answer and enter default. As such, the fact that Cielo claims to have proven its damages through declaration as a default prove up is not of the moment. Cielo had to prove its case in trial even in the absence of Bennett. It did not do so. The judgment therefore must be reversed.

Additionally, although we are reversing the judgment, we believe it advisable to address one other issue raised by Bennett here. Bennett claims the trial court improperly counted the length of the various bankruptcy stays in denying her motion to dismiss for failure to bring this case to trial within five years of commencement.

Code of Civil Procedure section 583.310 states that “[a]n action shall be brought to trial within five years after the action is commenced against the defendant,” and section 583.340 states that “[i]n computing the time within which an action must be brought to trial . . . , there shall be excluded the time during which . . . [¶] (a) The jurisdiction of the court to try the action was suspended. [¶] (b) Prosecution or trial of the action was stayed or enjoined. [¶] (c) Bringing the action to trial, for any other reason, was impossible, impracticable, or futile.”

Here, it is undisputed that Bennett filed bankruptcy five times, which would have the effect of staying Cielo’s action against her. (See 11 U.S.C. § 362(a)(1).) Indeed, in opposing Bennett’s motion to dismiss under Code of Civil Procedure section 583.340, Cielo pointed out the five bankruptcies and calculated the length of each associated stay based on when each bankruptcy was filed and when each bankruptcy case was closed. The court appears to have accepted these dates in calculating the length of the stay and determining the five year mark by which Cielo had to bring their case to trial. However, Bennett claims that the court used the incorrect dates, emphasizing that the federal statute declares that a stay lasts until a case is closed or the time a case is dismissed—whichever occurs the earliest. (See 11 U.S.C. § 362(c)(2)(A) & (B).) Bennett further argues that had the court calculated the length of the stay using the earlier end point (when the cases were dismissed), the correct length of the stay associated with the

bankruptcy filings would have been 1,525 days not 1,724 as calculated by the court. Therefore, according to Bennett, the five-year period would have expired on March 3, 2019 not September 18, 2019 as stated by the trial court when it denied her motion to dismiss. As Bennett observes, the trial date in the instant matter was September 6, 2019, well after the five year date she calculated based on the bankruptcy stays.

Surprisingly, Cielo does not take issue with Bennett's calculations noting "the stay may technically end at dismissal" but claiming "many prudent attorneys would wait for termination of a bankruptcy before proceeding with litigation." Again, Cielo's argument misses the mark. Bennett's argument is aimed at what the statute requires not what the hypothetical prudent attorney would do.

We independently review a ruling on a motion to dismiss for failure to bring an action to trial within the five-year period provided by Code of Civil Procedure section 583.310 to the extent the ruling is based on an interpretation of the statute. (*Brown & Bryant, Inc. v. Hartford Accident & Indemnity Co.* (1994) 24 Cal.App.4th 247, 252.) However, if the court's ruling on such a motion was based on its evaluation of factual matters relating to whether the prosecution of the action was impossible, impracticable, or futile under Code of Civil Procedure section 583.340, we review the applicable order for an abuse of discretion. (*Bruns v. E-Commerce Exchange, Inc.* (2011) 51 Cal.4th 717, 731.) Here, as the matter is presented on appeal, it appears the court's ruling involved both. However, we get a different impression when reviewing the record.

Below, neither party cited nor discussed the relevant bankruptcy stay statute, Title 11 of the United States Code section 362. Moreover, Bennett did not argue to the trial court that the correct calculation of the length of

bankruptcy stay involves the earlier occurrence of when the case was dismissed or closed. Rather, Bennett makes this argument for the first time on appeal. And Cielo suggests there might have been other extenuating circumstances preventing it from moving forward in this case.

Based on this record, we are hesitant to weigh in on the issue when not all the facts, evidence, and arguments were presented to the trial court. Thus, we do not reach Bennett's argument that the court incorrectly decided her motion to dismiss. That said, it might be prudent for the trial court on remand, in addition to setting a new trial date, to allow Bennett to bring a new motion to dismiss where she can argue regarding the correct length of the stay while Cielo can bring to light any other issues that made prosecuting its case impossible, impracticable, or futile. However, we offer no opinion on how the trial court should rule on such a motion.

#### DISPOSITION

The judgment is reversed and remanded to the superior court. The superior court is instructed to vacate the judgment, vacate the default, reinstate the answer, and set a new trial date. Based on the arguments presented here, it also might be judicious to allow Bennett to bring a new motion to dismiss under Code of Civil Procedure section 583.310 and permit

the parties to fully brief and argue the issue. Again, we offer no opinion on any ruling on such a motion. Bennett is entitled to her costs on appeal.

HUFFMAN, Acting P. J.

WE CONCUR:

DATO, J.

GUERRERO, J.

# **EXHIBIT 14**

(Proof the Bennetts reversed a Bank of America Eviction and Foreclosure)

JUL 20 2015

Clerk of the Superior Court  
By: N. Damron

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SAN DIEGO  
10 APPELLATE DIVISION

11 BANK OF AMERICA, N.A.,

12 Plaintiff(s) and Respondent(s),

13 v.

14 PAMELA BENNETT & JAMES BENNETT,

15 Defendant(s) and Appellant(s).  
16

Appellate Division No.: 37-2013-00200169-CL-UD-CTL  
Trial Court Case No.: 37-2012-00039995-CL-UD-NC  
Trial Court Location: North County Division

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**DECISION/STATEMENT OF REASONS  
(CCP § 77(d)) BY THE COURT**

18 APPEAL from the 5/20/13 judgment of the trial court entered by the Superior Court San  
19 Diego County, Richard G. Cline, Judge.

20 REVERSED and REMANDED.

21 Preliminarily, Appellants' argument that this matter was improperly classified as a limited  
22 action is meritless. The Complaint for Unlawful Detainer filed on 11/9/12 states on its face that  
23 "The Demand Does not Exceed \$10,000," and a case remains classified as a limited civil case  
24 absent reclassification via a timely motion for reclassification or on the trial court's own motion  
25 and the payment of the required reclassification fee. (Code Civ. Proc., §§403.040, 403.060.)

26 The trial court abused its discretion by not continuing the hearing of Plaintiff's motion for  
27 summary judgment in light of the fact that Defendants' motion for summary judgment was  
28 scheduled to be heard two days later, and by not considering the evidence presented by Defendants

1 therein. Following de novo review, the trial court erroneously granted Plaintiff's motion for  
2 summary judgment and summarily denied Defendants' motion for summary judgment as "moot."  
3 Plaintiff's motion was not supported by any declaration(s) or request(s) for judicial notice as  
4 required by California Code of Civil Procedure section 437c, subdivision (b)(1).

5 The trial court also erroneously entered judgment and issued a writ of possession on  
6 5/20/13, while an automatic bankruptcy stay was in effect as of 5/17/13. (See Notice of Stay, CT  
7 269.) The 5/20/13 judgment is rendered void by the operation of the automatic bankruptcy stay.  
8 The Appellate Division also notes that on 5/23/13, the trial court clerk erroneously issued a  
9 "Notice" rejecting defendant's "Motion for Reconsideration," which states: "Per Judge Cline, the  
10 Motion for Reconsideration is Denied."

11 Upon the filing of the Notice of Stay, the trial court should have vacated the judgment and  
12 stayed the proceedings.

13 This matter is remanded to the trial court with directions to vacate the 5/20/13 unlawful  
14 detainer judgment and to conduct further proceedings as necessary consistent with this Decision.  
15 The Appellate Division notes that the parties advised during the 7/16/15 argument that possession is  
16 no longer at issue.

17 Each party is to bear their own costs on appeal.

18  
19 Unanimously reversed.

20 KERRY WELLS  
21 Presiding Judge, Appellate Division

22 GALE E. KANESHIRO  
23 Judge, Appellate Division

24 JOEL R. WOHLFEIL  
25 Judge, Appellate Division



CLERK'S CERTIFICATE

The foregoing document, consisting of  
1 page(s), is a full, true, and correct  
copy of the original copy on file in  
this office.

Clerk of the Superior Court

7/16/15 by JGR  
Date Deputy G. S. / o.w.a.

Attached 1 page -2-

<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO</b> <input checked="" type="checkbox"/> CENTRAL DIVISION, COUNTY COURTHOUSE, 220 W. BROADWAY, SAN DIEGO, CA 92101 <input type="checkbox"/> CENTRAL DIVISION, JUVENILE COURT, 2851 MEADOW LARK DR., SAN DIEGO, CA 92123 <input type="checkbox"/> EAST COUNTY DIVISION, 250 E. MAIN ST., EL CAJON, CA 92020 <input type="checkbox"/> NORTH COUNTY DIVISION, 325 S. MELROSE DR., VISTA, CA 92081 <input type="checkbox"/> SOUTH COUNTY DIVISION, 500 3RD AVE., CHULA VISTA, CA 91910	<small>FOR COURT USE ONLY</small> <b>FILED</b> San Diego Superior Court  <b>JUL 20 2015</b>  Clerk of the Superior Court By: <u>N. Damron</u>
APPELLANT PAMELA BENNETT AND JAMES BENNETT	
RESPONDENT BANK OF AMERICA, N.A.	
	SUPERIOR COURT CASE NUMBER 37-2012-00039995-CL-UD-NC
<b>CLERK'S CERTIFICATE OF SERVICE BY MAIL</b>	APPELLATE DIVISION CASE NUMBER 37-2013-00200169-CL-UD-CTL

I certify that I am not a party to the above-entitled cause, and that I placed a copy of the following document(s):  
DECISION/STATEMENT OF REASONS (CCP§77(d)) BY THE COURT dated 7/20/15

in a sealed envelope addressed to the parties shown with postage prepaid, and deposited it in the United States mail at  
 Chula Vista  El Cajon  Ramona  San Diego  Vista, California.

Date: 7/20/15

Clerk of the Superior Court

by  Deputy  
N. Damron

PAMELA & JAMES BENNETT  
P.O. BOX 675733  
RANCHO SANTE FE, CA 92067-5733

Michael L. Withem  
Rosenthal, Withem & Zeff  
16027 Ventura Blvd., Suite 320  
Encino, CA 91436

# EXHIBIT 15

(Bank of America admitted per day value of the Bennetts' home was \$500.00)

FILED

NORTH COUNTY DISTRICT

2012 NOV -9 AM 9:30

CLERK-SUPERIOR COURT  
SAN DIEGO COUNTY, CA

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7 Attorneys for Plaintiff,  
8 BANK OF AMERICA, N.A. FOR THE BENEFIT OF  
9 DEUTSCHE BANK NATIONAL TRUST COMPANY,  
10 AS TRUSTEE FOR HOLDERS OF THE GSR  
11 MORTGAGE LOAN TRUST 2007-OA1

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BANK OF AMERICA, N.A. FOR THE  
BENEFIT OF DEUTSCHE BANK  
NATIONAL TRUST COMPANY, AS  
TRUSTEE FOR HOLDERS OF THE GSR  
MORTGAGE LOAN TRUST 2007-OA1,

Plaintiff(s),

vs.

PAMELA BENNETT and DOES I through X,  
inclusive,

Defendant.

CASE NO.: 37-2012-00039995-GL-UD-NC

COMPLAINT FOR UNLAWFUL  
DETAINER

ACTION BASED ON CODE OF CIVIL  
PROCEDURE SECTION 1161a

[THE DEMAND DOES NOT EXCEED  
\$10,000]

PROPERTY ADDRESS:  
8129 VIA LUNA  
RANCHO SANTA FE, CALIFORNIA 92067  
P.O. BOX 675733, RANCHO SANTA FE, CA  
92067 (for mailing purposes only)

Plaintiff alleges:

1. Plaintiff, BANK OF AMERICA, N.A. FOR THE BENEFIT OF DEUTSCHE BANK  
NATIONAL TRUST COMPANY, AS TRUSTEE FOR HOLDERS OF THE GSR  
MORTGAGE LOAN TRUST 2007-OA1 ("Plaintiff"), is at all times mentioned a Corporation

1 authorized to do business in California and is the owner of and entitled to immediate possession  
2 of the subject property generally described as 8129 VIA LUNA, RANCHO SANTA FE,  
3 CALIFORNIA 92067 and P.O. BOX 675733, RANCHO SANTA FE, CALIFORNIA 92067  
4 (For mailing purposes only) ("Property").

5 2. Plaintiff is informed and believes that Defendant, and each of them, are now and at all  
6 times mentioned herein were resident(s) of the County of SAN DIEGO, State of California.

7 3. Plaintiff is unaware of the true names and capacities whether individual, corporate,  
8 associate or otherwise of the Defendants sued as Does 1 through 10, inclusive, and therefore  
9 Defendants are sued under fictitious names. When the true names and capacities of the  
10 fictitiously named Defendants have been ascertained, Plaintiff will seek leave of the Court to  
11 amend this Complaint accordingly. Plaintiff is informed and believes that the fictitiously named  
12 Defendants are responsible in some manner for the events and happenings hereinafter referred to,  
13 thereby causing Plaintiff the damages herein alleged.

14 4. Plaintiff is informed and believes that PAMELA BENNETT is in possession of the  
15 Property.

16 5. Prior to the commencement of this action, title to the subject Property was vested in  
17 the name or names of PAMELA BENNETT. PAMELA BENNETT was the original Trustor  
18 under a Deed of Trust, which secured the Property, recorded in the official records of SAN  
19 DIEGO County, California. The Deed of Trust contained a power of sale clause that allowed the  
20 Trustee to proceed with a non-judicial foreclosure upon default.

21 6. The Property was sold by the Trustee to Plaintiff at a Trustee's Sale. Said Trustee's  
22 Sale was held in accordance with California Civil Code §2924 et. seq.

23 7. The Trustee's Sale was duly perfected by recording a Trustee's Deed Upon Sale in the  
24 Office of the County Recorder of SAN DIEGO County, California. A true and correct copy of

1 the Trustee's Deed Upon Sale is attached hereto as Exhibit "A" and incorporated herein by  
2 reference.

3 8. After Plaintiff obtained legal title to the Property, Plaintiff caused to be served on the  
4 Defendant a Notice to Quit. The Notice to Quit gave any tenant thirty (30) or ninety (90) days in  
5 which to vacate the Property and the previous owner or any other occupant three (3) days in  
6 which to vacate the Property upon service of the Notice to Quit.

7 9. Service of the Notice to Quit on PAMELA BENNETT was effected by posting a  
8 copy of the Notice to Quit on the premises on October 24, 2012, and by mailing a copy of same  
9 on October 24, 2012, because defendant could not be found on the premises. Service of the  
10 Notice to Quit on all other occupants was effected by posting a copy of the Notice to Quit on the  
11 premises on October 24, 2012, and by mailing a copy of same on October 24, 2012, because the  
12 occupants could not be found on the premises. Attached hereto as Exhibit "B" is a true and  
13 correct copy of the Notice to Quit along with copies of the Proof of Service.

14 10. More than three (3) days have elapsed since service of said Notice to Quit on the  
15 Defendant, but Defendant has failed and refused to deliver up possession of the Property.

16 11. Plaintiff demands possession of the Property from the Defendant, and each of them,  
17 pursuant to California Code of Civil Procedure §1161a(b) and §1161a(c).

18 12. Defendant continues in possession of the Property without Plaintiff's permission or  
19 consent.

20 13. The reasonable daily rental value of the Property is \$500.00.

21 14. Attached hereto as Exhibit "C" is a true and correct copy of the Affidavit of Military  
22 Status.

23 WHEREFORE, Plaintiff prays for Judgment against Defendant, and each of them, as  
24 follows:

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- a) Restitution and possession of the Property;
- b) An Order directing Defendant to quit and deliver up possession of the Property to Plaintiff;
- c) Damages at the rate of \$500.00 per day, from and including October 30, 2012, for each day that Defendant continues in possession of the Property up to date of Judgment;
- d) For costs of suit herein;
- e) For such other relief as the Court deems just and proper.

Dated: November 6, 2012

MILES, BAUER, BERGSTROM & WINTERS, LLP

*Shelly Raiszadeh, Esq.*  
SB# 270148

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S. Shelly Raiszadeh, Esq.  
Attorneys for Plaintiff

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VERIFICATION

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am an attorney at law duly licensed to practice before this court and I am an associate in the law firm of Miles, Bauer, Bergstrom & Winters, LLP, attorneys for BANK OF AMERICA, N.A. FOR THE BENEFIT OF DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE FOR HOLDERS OF THE GSR MORTGAGE LOAN TRUST 2007-OA1, a party to this action. Such party is absent from the county aforesaid where such attorneys have their office and make the verification for and on behalf of that party for that reason. I have read the above document and know its contents. I am informed and believe and on that ground allege that the matters stated in it are true.

Executed on November 6, 2012, at Santa Ana, California.

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

MILES, BAUER, BERGSTROM & WINTERS, LLP

*Shelly Raiszadeh, Esq*  
GBN 270148

\_\_\_\_\_  
S. Shelly Raiszadeh, Esq  
Attorneys for Plaintiff

# **EXHIBIT 16**

(United States Comptroller finds Bank of America illegally Foreclosed)

**UNITED STATES OF AMERICA  
DEPARTMENT OF THE TREASURY  
COMPTROLLER OF THE CURRENCY**

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**In the Matter of:**

Bank of America, N.A.  
Charlotte, NC

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**CONSENT ORDER**

The Comptroller of the Currency of the United States of America ("Comptroller"), through his national bank examiners and other staff of the Office of the Comptroller of the Currency ("OCC"), as part of an interagency horizontal review of major residential mortgage servicers, has conducted an examination of the residential real estate mortgage foreclosure processes of Bank of America, N.A., Charlotte, NC ("Bank"). The OCC has identified certain deficiencies and unsafe or unsound practices in residential mortgage servicing and in the Bank's initiation and handling of foreclosure proceedings. The OCC has informed the Bank of the findings resulting from the examination.

The Bank, by and through its duly elected and acting Board of Directors ("Board"), has executed a Stipulation and Consent to the Issuance of a Consent Order, dated April 13, 2011 ("Stipulation and Consent"), that is accepted by the Comptroller. By this Stipulation and Consent, which is incorporated by reference, the Bank has consented to the issuance of this Consent Cease and Desist Order ("Order") by the Comptroller. The Bank has committed to taking all necessary and appropriate steps to remedy the deficiencies and unsafe or unsound practices identified by the OCC, and to enhance the Bank's residential mortgage servicing and

foreclosure processes. The Bank has begun implementing procedures to remediate the practices addressed in this Order.

## ARTICLE I

### COMPTROLLER'S FINDINGS

The Comptroller finds, and the Bank neither admits nor denies, the following:

(1) The Bank is among the largest servicers of residential mortgages in the United States, and services a portfolio of 13,500,000 residential mortgage loans. During the recent housing crisis, a substantially large number of residential mortgage loans serviced by the Bank became delinquent and resulted in foreclosure actions. The Bank's foreclosure inventory grew substantially from January 2009 through September 2010.

(2) In connection with certain foreclosures of loans in its residential mortgage servicing portfolio, the Bank:

(a) filed or caused to be filed in state and federal courts affidavits executed by its employees or employees of third-party service providers making various assertions, such as ownership of the mortgage note and mortgage, the amount of the principal and interest due, and the fees and expenses chargeable to the borrower, in which the affiant represented that the assertions in the affidavit were made based on personal knowledge or based on a review by the affiant of the relevant books and records, when, in many cases, they were not based on such personal knowledge or review of the relevant books and records;

(b) filed or caused to be filed in state and federal courts, or in local land records offices, numerous affidavits or other mortgage-related documents that were not properly notarized, including those not signed or affirmed in the presence of a notary;

(c) litigated foreclosure proceedings and initiated non-judicial foreclosure proceedings without always ensuring that either the promissory note or the mortgage document were properly endorsed or assigned and, if necessary, in the possession of the appropriate party at the appropriate time;

(d) failed to devote sufficient financial, staffing and managerial resources to ensure proper administration of its foreclosure processes;

(e) failed to devote to its foreclosure processes adequate oversight, internal controls, policies, and procedures, compliance risk management, internal audit, third party management, and training; and

(f) failed to sufficiently oversee outside counsel and other third-party providers handling foreclosure-related services.

(3) By reason of the conduct set forth above, the Bank engaged in unsafe or unsound banking practices.

Pursuant to the authority vested in him by the Federal Deposit Insurance Act, as amended, 12 U.S.C. §1818(b), the Comptroller hereby ORDERS that:

## ARTICLE II

### COMPLIANCE COMMITTEE

(1) The Board shall maintain a Compliance Committee of at least three (3) directors, of which at least two (2) may not be employees or officers of the Bank or any of its subsidiaries or affiliates. In the event of a change of the membership, the name of any new member shall be submitted to the Examiner-in-Charge for Large Bank Supervision at the Bank (“Examiner-in-Charge”). The Compliance Committee shall be responsible for monitoring and coordinating the

Bank's compliance with the provisions of this Order. The Compliance Committee shall meet at least monthly and maintain minutes of its meetings.

(2) Within ninety (90) days of this Order, and within thirty (30) days after the end of each quarter thereafter, the Compliance Committee shall submit a written progress report to the Board setting forth in detail actions taken to comply with each Article of this order, and the results and status of those actions.

(3) The Board shall forward a copy of the Compliance Committee's report, with any additional comments by the Board, to the Deputy Comptroller for Large Bank Supervision ("Deputy Comptroller") and the Examiner-in-Charge within ten (10) days of receiving such report.

### ARTICLE III

#### COMPREHENSIVE ACTION PLAN

(1) Within sixty (60) days of this Order, the Bank shall submit to the Deputy Comptroller and the Examiner-in-Charge an acceptable plan containing a complete description of the actions that are necessary and appropriate to achieve compliance with Articles IV through XII of this Order ("Action Plan"). In the event the Deputy Comptroller asks the Bank to revise the Action Plan, the Bank shall promptly make the requested revisions and resubmit the Action Plan to the Deputy Comptroller and the Examiner-in-Charge. Following acceptance of the Action Plan by the Deputy Comptroller, the Bank shall not take any action that would constitute a significant deviation from, or material change to, the requirements of the Action Plan or this Order, unless and until the Bank has received a prior written determination of no supervisory objection from the Deputy Comptroller.

(2) The Board shall ensure that the Bank achieves and thereafter maintains compliance with this Order, including, without limitation, successful implementation of the Action Plan. The Board shall further ensure that, upon implementation of the Action Plan, the Bank achieves and maintains effective mortgage servicing, foreclosure, and loss mitigation activities (as used herein, the phrase “loss mitigation” shall include, but not be limited to, activities related to special forbearances, modifications, short refinances, short sales, cash-for-keys, and deeds-in-lieu of foreclosure and be referred to as either “Loss Mitigation” or “Loss Mitigation Activities”), as well as associated risk management, compliance, quality control, audit, training, staffing, and related functions. In order to comply with these requirements, the Board shall:

(a) require the timely reporting by Bank management of such actions directed by the Board to be taken under this Order;

(b) follow-up on any non-compliance with such actions in a timely and appropriate manner; and

(c) require corrective action be taken in a timely manner for any non-compliance with such actions.

(3) The Action Plan shall address, at a minimum:

(a) financial resources to develop and implement an adequate infrastructure to support existing and/or future Loss Mitigation and foreclosure activities and ensure compliance with this Order;

(b) organizational structure, managerial resources, and staffing to support existing and/or future Loss Mitigation and foreclosure activities and ensure compliance with this Order;

(c) metrics to measure and ensure the adequacy of staffing levels relative to existing and/or future Loss Mitigation and foreclosure activities, such as limits for the number of loans assigned to a Loss Mitigation employee, including the single point of contact as hereinafter defined, and deadlines to review loan modification documentation, make loan modification decisions, and provide responses to borrowers;

(d) governance and controls to ensure compliance with all applicable federal and state laws (including the U.S. Bankruptcy Code and the Servicemembers Civil Relief Act (“SCRA”)), rules, regulations, and court orders and requirements, as well as the Membership Rules of MERSCORP, servicing guides of the Government Sponsored Enterprises (“GSEs”) or investors, including those with the Federal Housing Administration and those required by the Home Affordable Modification Program (“HAMP”), and loss share agreements with the Federal Deposit Insurance Corporation (collectively “Legal Requirements”), and the requirements of this Order.

(4) The Action Plan shall specify timelines for completion of each of the requirements of Articles IV through XII of this Order. The timelines in the Action Plan shall be consistent with any deadlines set forth in this Order.

#### ARTICLE IV

##### COMPLIANCE PROGRAM

(1) Within sixty (60) days of this Order, the Bank shall submit to the Deputy Comptroller and the Examiner-in-Charge an acceptable compliance program to ensure that the mortgage servicing and foreclosure operations, including Loss Mitigation and loan modification, comply with all applicable Legal Requirements, OCC supervisory guidance, and the

requirements of this Order and are conducted in a safe and sound manner (“Compliance Program”). The Compliance Program shall be implemented within one hundred twenty (120) days of this Order. Any corrective action timeframe in the Compliance Program that is in excess of one hundred twenty (120) days must be approved by the Examiner-in-Charge. The Compliance Program shall include, at a minimum:

(a) appropriate written policies and procedures to conduct, oversee, and monitor mortgage servicing, Loss Mitigation, and foreclosure operations;

(b) processes to ensure that all factual assertions made in pleadings, declarations, affidavits, or other sworn statements filed by or on behalf of the Bank are accurate, complete, and reliable; and that affidavits and declarations are based on personal knowledge or a review of the Bank's books and records when the affidavit or declaration so states;

(c) processes to ensure that affidavits filed in foreclosure proceedings are executed and notarized in accordance with state legal requirements and applicable guidelines, including jurat requirements;

(d) processes to review and approve standardized affidavits and declarations for each jurisdiction in which the Bank files foreclosure actions to ensure compliance with applicable laws, rules and court procedures;

(e) processes to ensure that the Bank has properly documented ownership of the promissory note and mortgage (or deed of trust) under applicable state law, or is otherwise a proper party to the action (as a result of agency or other similar status) at all stages of foreclosure and bankruptcy litigation, including appropriate transfer and delivery of endorsed notes and assigned mortgages or deeds of trust at the formation of a residential mortgage-backed security,

and lawful and verifiable endorsement and successive assignment of the note and mortgage or deed of trust to reflect all changes of ownership;

(f) processes to ensure that a clear and auditable trail exists for all factual information contained in each affidavit or declaration, in support of each of the charges that are listed, including whether the amount is chargeable to the borrower and/or claimable by the investor;

(g) processes to ensure that foreclosure sales (including the calculation of the default period, the amounts due, and compliance with notice requirements) and post-sale confirmations are in accordance with the terms of the mortgage loan and applicable state and federal law requirements;

(h) processes to ensure that all fees, expenses, and other charges imposed on the borrower are assessed in accordance with the terms of the underlying mortgage note, mortgage, or other customer authorization with respect to the imposition of fees, charges, and expenses, and in compliance with all applicable Legal Requirements and OCC supervisory guidance;

(i) processes to ensure that the Bank has the ability to locate and secure all documents, including the original promissory notes if required, necessary to perform mortgage servicing, foreclosure and Loss Mitigation, or loan modification functions;

(j) ongoing testing for compliance with applicable Legal Requirements and OCC supervisory guidance that is completed by qualified persons with requisite knowledge and ability (which may include internal audit) who are independent of the Bank's business lines;

(k) measures to ensure that policies, procedures, and processes are updated on an ongoing basis as necessary to incorporate any changes in applicable Legal Requirements and OCC supervisory guidance;

(l) processes to ensure the qualifications of current management and supervisory personnel responsible for mortgage servicing and foreclosure processes and operations, including collections, Loss Mitigation and loan modification, are appropriate and a determination of whether any staffing changes or additions are needed;

(m) processes to ensure that staffing levels devoted to mortgage servicing and foreclosure processes and operations, including collections, Loss Mitigation, and loan modification, are adequate to meet current and expected workload demands;

(n) processes to ensure that workloads of mortgage servicing, foreclosure and Loss Mitigation, and loan modification personnel, including single point of contact personnel as hereinafter defined, are reviewed and managed. Such processes, at a minimum, shall assess whether the workload levels are appropriate to ensure compliance with the requirements of Article IX of this Order, and necessary adjustments to workloads shall promptly follow the completion of the reviews. An initial review shall be completed within ninety (90) days of this Order, and subsequent reviews shall be conducted semi-annually;

(o) processes to ensure that the risk management, quality control, audit, and compliance programs have the requisite authority and status within the organization so that appropriate reviews of the Bank's mortgage servicing, Loss Mitigation, and foreclosure activities and operations may occur and deficiencies are identified and promptly remedied;

(p) appropriate training programs for personnel involved in mortgage servicing and foreclosure processes and operations, including collections, Loss Mitigation, and loan modification, to ensure compliance with applicable Legal Requirements and supervisory guidance; and

(q) appropriate procedures for customers in bankruptcy, including a prohibition on collection of fees in violation of bankruptcy's automatic stay (11 U.S.C. § 362), the discharge injunction (11 U.S.C. § 524), or any applicable court order.

## ARTICLE V

### THIRD PARTY MANAGEMENT

(1) Within sixty (60) days of this Order, the Bank shall submit to the Deputy Comptroller and the Examiner-in-Charge acceptable policies and procedures for outsourcing foreclosure or related functions, including Loss Mitigation and loan modification, and property management functions for residential real estate acquired through or in lieu of foreclosure, to any agent, independent contractor, consulting firm, law firm (including local counsel in foreclosure or bankruptcy proceedings retained to represent the interests of the owners of mortgages), property management firm, or other third-party (including any affiliate of the Bank) ("Third-Party Providers"). Third-party management policies and procedures shall be implemented within one hundred twenty (120) days of this Order. Any corrective action timetable that is in excess of one hundred twenty (120) days must be approved by the Examiner-in-Charge. The policies and procedures shall include, at a minimum:

(a) appropriate oversight to ensure that Third-Party Providers comply with all applicable Legal Requirements, OCC supervisory guidance (including applicable portions of OCC Bulletin 2001-47), and the Bank's policies and procedures;

(b) measures to ensure that all original records transferred from the Bank to Third-Party Providers (including the originals of promissory notes and mortgage documents) remain within the custody and control of the Third-Party Provider (unless filed with the

appropriate court or the loan is otherwise transferred to another party), and are returned to the Bank or designated custodians at the conclusion of the performed service, along with all other documents necessary for the Bank's files, and that the Bank retains imaged copies of significant documents sent to Third-Party Providers;

(c) measures to ensure the accuracy of all documents filed or otherwise utilized on behalf of the Bank or the owners of mortgages in any judicial or non-judicial foreclosure proceeding, related bankruptcy proceeding, or in other foreclosure-related litigation, including, but not limited to, documentation sufficient to establish ownership of the promissory note and/or right to foreclose at the time the foreclosure action is commenced;

(d) processes to perform appropriate due diligence on potential and current Third-Party Provider qualifications, expertise, capacity, reputation, complaints, information security, document custody practices, business continuity, and financial viability, and to ensure adequacy of Third-Party Provider staffing levels, training, work quality, and workload balance;

(e) processes to ensure that contracts provide for adequate oversight, including requiring Third-Party Provider adherence to Bank foreclosure processing standards, measures to enforce Third-Party Provider contractual obligations, and processes to ensure timely action with respect to Third-Party Provider performance failures;

(f) processes to ensure periodic reviews of Third-Party Provider work for timeliness, competence, completeness, and compliance with all applicable Legal Requirements and supervisory guidance, and to ensure that foreclosures are conducted in a safe and sound manner;

(g) processes to review customer complaints about Third-Party Provider services;

(h) processes to prepare contingency and business continuity plans that ensure the continuing availability of critical third-party services and business continuity of the Bank, consistent with federal banking agency guidance, both to address short-term and long-term service disruptions and to ensure an orderly transition to new service providers should that become necessary;

(i) a review of fee structures for Third-Party Providers to ensure that the method of compensation considers the accuracy, completeness, and legal compliance of foreclosure filings and is not based solely on increased foreclosure volume and/or meeting processing timelines; and

(j) a certification process for law firms (and recertification of existing law firm providers) that provide residential mortgage foreclosure and bankruptcy services for the Bank, on a periodic basis, as qualified to serve as Third-Party Providers to the Bank including that attorneys are licensed to practice in the relevant jurisdiction and have the experience and competence necessary to perform the services requested.

## ARTICLE VI

### MORTGAGE ELECTRONIC REGISTRATION SYSTEM

(1) Within sixty (60) days of this Order, the Bank shall submit to the Deputy Comptroller and the Examiner-in-Charge an acceptable plan to ensure appropriate controls and oversight of the Bank's activities with respect to the Mortgage Electronic Registration System ("MERS") and compliance with MERSCORP's membership rules, terms, and conditions ("MERS Requirements") ("MERS Plan"). The MERS Plan shall be implemented within one hundred twenty (120) days of this Order. Any corrective action timetable that is in excess of one

hundred twenty (120) days must be approved by the Examiner-in-Charge. The MERS Plan shall include, at a minimum:

(a) processes to ensure that all mortgage assignments and endorsements with respect to mortgage loans serviced or owned by the Bank out of MERS' name are executed only by a certifying officer authorized by MERS and approved by the Bank;

(b) processes to ensure that all other actions that may be taken by MERS certifying officers (with respect to mortgage loans serviced or owned by the Bank) are executed by a certifying officer authorized by MERS and approved by the Bank;

(c) processes to ensure that the Bank maintains up-to-date corporate resolutions from MERS for all Bank employees and third-parties who are certifying officers authorized by MERS, and up-to-date lists of MERS certifying officers;

(d) processes to ensure compliance with all MERS Requirements and with the requirements of the MERS Corporate Resolution Management System ("CRMS");

(e) processes to ensure the accuracy and reliability of data reported to MERSCORP, including monthly system-to-system reconciliations for all MERS mandatory reporting fields, and daily capture of all rejects/warnings reports associated with registrations, transfers, and status updates on open-item aging reports. Unresolved items must be maintained on open-item aging reports and tracked until resolution. The Bank shall determine and report whether the foreclosures for loans serviced by the Bank that are currently pending in MERS' name are accurate and how many are listed in error, and describe how and by when the data on the MERSCORP system will be corrected; and

(f) an appropriate MERS quality assurance workplan, which clearly describes all tests, test frequency, sampling methods, responsible parties, and the expected process for open-

item follow-up, and includes an annual independent test of the control structure of the system-to-system reconciliation process, the reject/warning error correction process, and adherence to the Bank's MERS Plan.

(2) The Bank shall include MERS and MERSCORP in its third-party vendor management process, which shall include a detailed analysis of potential vulnerabilities, including information security, business continuity, and vendor viability assessments.

## ARTICLE VII

### FORECLOSURE REVIEW

(1) Within forty-five (45) days of this Order, the Bank shall retain an independent consultant acceptable to the Deputy Comptroller and the Examiner-in-Charge to conduct an independent review of certain residential foreclosure actions regarding individual borrowers with respect to the Bank's mortgage servicing portfolio. The review shall include residential foreclosure actions or proceedings (including foreclosures that were in process or completed) for loans serviced by the Bank, whether brought in the name of the Bank, the investor, the mortgage note holder, or any agent for the mortgage note holder (including MERS), that have been pending at any time from January 1, 2009 to December 31, 2010, as well as residential foreclosure sales that occurred during this time period ("Foreclosure Review").

(2) Within fifteen (15) days of the engagement of the independent consultant described in this Article, but prior to the commencement of the Foreclosure Review, the Bank shall submit to the Deputy Comptroller and the Examiner-in-Charge for approval an engagement letter that sets forth:

(a) the methodology for conducting the Foreclosure Review, including: (i) a description of the information systems and documents to be reviewed, including the selection of criteria for cases to be reviewed; (ii) the criteria for evaluating the reasonableness of fees and penalties; (iii) other procedures necessary to make the required determinations (such as through interviews of employees and third parties and a process for submission and review of borrower claims and complaints); and (iv) any proposed sampling techniques. In setting the scope and review methodology under clause (i) of this sub-paragraph, the independent consultant may consider any work already done by the Bank or other third-parties on behalf of the Bank. The engagement letter shall contain a full description of the statistical basis for the sampling methods chosen, as well as procedures to increase the size of the sample depending on results of the initial sampling;

(b) expertise and resources to be dedicated to the Foreclosure Review;

(c) completion of the Foreclosure Review within one hundred twenty (120) days from approval of the engagement letter; and

(d) a written commitment that any workpapers associated with the Foreclosure Review shall be made available to the OCC immediately upon request.

(3) The purpose of the Foreclosure Review shall be to determine, at a minimum:

(a) whether at the time the foreclosure action was initiated or the pleading or affidavit filed (including in bankruptcy proceedings and in defending suits brought by borrowers), the foreclosing party or agent of the party had properly documented ownership of the promissory note and mortgage (or deed of trust) under relevant state law, or was otherwise a proper party to the action as a result of agency or similar status;

(b) whether the foreclosure was in accordance with applicable state and federal law, including but not limited to the SCRA and the U.S. Bankruptcy Code;

(c) whether a foreclosure sale occurred when an application for a loan modification or other Loss Mitigation was under consideration; when the loan was performing in accordance with a trial or permanent loan modification; or when the loan had not been in default for a sufficient period of time to authorize foreclosure pursuant to the terms of the mortgage loan documents and related agreements;

(d) whether, with respect to non-judicial foreclosures, the procedures followed with respect to the foreclosure sale (including the calculation of the default period, the amounts due, and compliance with notice periods) and post-sale confirmations were in accordance with the terms of the mortgage loan and state law requirements;

(e) whether a delinquent borrower's account was only charged fees and/or penalties that were permissible under the terms of the borrower's loan documents, applicable state and federal law, and were reasonable and customary;

(f) whether the frequency that fees were assessed to any delinquent borrower's account (including broker price opinions) was excessive under the terms of the borrower's loan documents, and applicable state and federal law;

(g) whether Loss Mitigation Activities with respect to foreclosed loans were handled in accordance with the requirements of the HAMP, and consistent with the policies and procedures applicable to the Bank's proprietary loan modifications or other loss mitigation programs, such that each borrower had an adequate opportunity to apply for a Loss Mitigation option or program, any such application was handled properly, a final decision was made on a reasonable basis, and was communicated to the borrower before the foreclosure sale; and

(h) whether any errors, misrepresentations, or other deficiencies identified in the Foreclosure Review resulted in financial injury to the borrower or the mortgagee.

(4) The independent consultant shall prepare a written report detailing the findings of the Foreclosure Review (“Foreclosure Report”), which shall be completed within thirty (30) days of completion of the Foreclosure Review. Immediately upon completion, the Foreclosure Report shall be submitted to the Deputy Comptroller, Examiner-in-Charge, and the Board.

(5) Within forty-five (45) days of submission of the Foreclosure Report to the Deputy Comptroller, Examiner-in-Charge, and the Board, the Bank shall submit to the Deputy Comptroller and the Examiner-in-Charge a plan, acceptable to the OCC, to remediate all financial injury to borrowers caused by any errors, misrepresentations, or other deficiencies identified in the Foreclosure Report, by:

(a) reimbursing or otherwise appropriately remediating borrowers for impermissible or excessive penalties, fees, or expenses, or for other financial injury identified in accordance with this Article; and

(b) taking appropriate steps to remediate any foreclosure sale where the foreclosure was not authorized as described in this Article.

(6) Within sixty (60) days after the OCC provides supervisory non-objection to the plan set forth in paragraph (5) above, the Bank shall make all reimbursement and remediation payments and provide all credits required by such plan, and provide the OCC with a report detailing such payments and credits.

ARTICLE VIII

MANAGEMENT INFORMATION SYSTEMS

(1) Within sixty (60) days of this Order, the Bank shall submit to the Deputy Comptroller and the Examiner-in-Charge an acceptable plan for operation of its management information systems (“MIS”) for foreclosure and Loss Mitigation or loan modification activities to ensure the timely delivery of complete and accurate information to permit effective decision-making. The MIS plan shall be implemented within one hundred twenty (120) days of this Order. Any corrective action timeframe that is in excess of one hundred twenty (120) days must be approved by the Examiner-in-Charge. The plan shall include, at a minimum:

(a) a description of the various components of MIS used by the Bank for foreclosure and Loss Mitigation or loan modification activities;

(b) a description of and timetable for any needed changes or upgrades to:

(i) monitor compliance with all applicable Legal Requirements and supervisory guidance, and the requirements of this Order;

(ii) ensure the ongoing accuracy of records for all serviced mortgages, including, but not limited to, records necessary to establish ownership and the right to foreclose by the appropriate party for all serviced mortgages, outstanding balances, and fees assessed to the borrower; and

(iii) measures to ensure that Loss Mitigation, loan foreclosure, and modification staffs have sufficient and timely access to information provided by the borrower regarding loan foreclosure and modification activities;

(c) testing the integrity and accuracy of the new or enhanced MIS to ensure that reports generated by the system provide necessary information for adequate monitoring and quality controls.

## ARTICLE IX

### MORTGAGE SERVICING

(1) Within sixty (60) days of this Order, the Bank shall submit to the Deputy Comptroller and the Examiner-in-Charge an acceptable plan, along with a timeline for ensuring effective coordination of communications with borrowers, both oral and written, related to Loss Mitigation or loan modification and foreclosure activities: (i) to ensure that communications are timely and effective and are designed to avoid confusion to borrowers; (ii) to ensure continuity in the handling of borrowers' loan files during the Loss Mitigation, loan modification, and foreclosure process by personnel knowledgeable about a specific borrower's situation; (iii) to ensure reasonable and good faith efforts, consistent with applicable Legal Requirements, are engaged in Loss Mitigation and foreclosure prevention for delinquent loans, where appropriate; and (iv) to ensure that decisions concerning Loss Mitigation or loan modifications continue to be made and communicated in a timely fashion. Prior to submitting the plan, the Bank shall conduct a review to determine whether processes involving past due mortgage loans or foreclosures overlap in such a way that they may impair or impede a borrower's efforts to effectively pursue a loan modification, and whether Bank employee compensation practices discourage Loss Mitigation or loan modifications. The plan shall be implemented within one hundred twenty (120) days of this Order. Any corrective action timeframe that is in excess of

one hundred twenty (120) days must be approved by the Examiner-in-Charge. The plan shall include, at a minimum:

(a) measures to ensure that staff handling Loss Mitigation and loan modification requests routinely communicate and coordinate with staff processing the foreclosure on the borrower's property;

(b) appropriate deadlines for responses to borrower communications and requests for consideration of Loss Mitigation, including deadlines for decision-making on Loss Mitigation Activities, with the metrics established not being less responsive than the timelines in the HAMP program;

(c) establishment of an easily accessible and reliable single point of contact for each borrower so that the borrower has access to an employee of the Bank to obtain information throughout the Loss Mitigation, loan modification, and foreclosure processes;

(d) a requirement that written communications with the borrower identify such single point of contact along with one or more direct means of communication with the contact;

(e) measures to ensure that the single point of contact has access to current information and personnel (in-house or third-party) sufficient to timely, accurately, and adequately inform the borrower of the current status of the Loss Mitigation, loan modification, and foreclosure activities;

(f) measures to ensure that staff are trained specifically in handling mortgage delinquencies, Loss Mitigation, and loan modifications;

(g) procedures and controls to ensure that a final decision regarding a borrower's loan modification request (whether on a trial or permanent basis) is made and communicated to the borrower in writing, including the reason(s) why the borrower did not qualify for the trial or

permanent modification (including the net present value calculations utilized by the Bank, if applicable) by the single point of contact within a reasonable period of time before any foreclosure sale occurs;

(h) procedures and controls to ensure that when the borrower's loan has been approved for modification on a trial or permanent basis that: (i) no foreclosure or further legal action predicate to foreclosure occurs, unless the borrower is deemed in default on the terms of the trial or permanent modification; and (ii) the single point of contact remains available to the borrower and continues to be referenced on all written communications with the borrower;

(i) policies and procedures to enable borrowers to make complaints regarding the Loss Mitigation or modification process, denial of modification requests, the foreclosure process, or foreclosure activities which prevent a borrower from pursuing Loss Mitigation or modification options, and a process for making borrowers aware of the complaint procedures;

(j) procedures for the prompt review, escalation, and resolution of borrower complaints, including a process to communicate the results of the review to the borrower on a timely basis;

(k) policies and procedures to ensure that payments are credited in a prompt and timely manner; that payments, including partial payments to the extent permissible under the terms of applicable legal instruments, are applied to scheduled principal, interest, and/or escrow before fees, and that any misapplication of borrower funds is corrected in a prompt and timely manner;

(l) policies and procedures to ensure that timely information about Loss Mitigation options is sent to the borrower in the event of a delinquency or default, including plain language notices about loan modification and the pendency of foreclosure proceedings;

(m) policies and procedures to ensure that foreclosure, Loss Mitigation, and loan modification documents provided to borrowers and third parties are appropriately maintained and tracked, and that borrowers generally will not be required to resubmit the same documented information that has already been provided, and that borrowers are notified promptly of the need for additional information; and

(n) policies and procedures to consider loan modifications or other Loss Mitigation Activities with respect to junior lien loans owned by the Bank, and to factor the risks associated with such junior lien loans into loan loss reserving practices, where the Bank services the associated first lien mortgage and becomes aware that such first lien mortgage is delinquent or has been modified. Such policies and procedures shall require the ongoing maintenance of appropriate loss reserves for junior lien mortgages owned by the Bank and the charge-off of such junior lien loans in accordance with FFIEC retail credit classification guidelines.

## ARTICLE X

### RISK ASSESSMENT AND RISK MANAGEMENT PLAN

(1) Within ninety (90) days of this Order, the Bank shall conduct a written, comprehensive assessment of the Bank's risks in mortgage servicing operations, particularly in the areas of Loss Mitigation, foreclosure, and the administration and disposition of other real estate owned, including, but not limited to, operational, compliance, transaction, legal, and reputational risks.

(2) The Bank shall develop an acceptable plan to effectively manage or mitigate identified risks on an ongoing basis, with oversight by the Bank's senior risk managers, senior

management, and the Board. The assessment and plan shall be provided to the Deputy Comptroller and the Examiner-in-Charge within one hundred twenty (120) days of this Order.

## ARTICLE XI

### APPROVAL, IMPLEMENTATION AND REPORTS

(1) The Bank shall submit the written plans, programs, policies, and procedures required by this Order for review and determination of no supervisory objection to the Deputy Comptroller and the Examiner-in-Charge within the applicable time periods set forth in Articles II through X. The Bank shall adopt the plans, programs, policies, and procedures required by this Order upon submission to the OCC, and shall immediately make any revisions requested by the Deputy Comptroller or the Examiner-in-Charge. Upon adoption, the Bank shall immediately implement the plans, programs, policies, and procedures required by this Order and thereafter fully comply with them.

(2) During the term of this Order, the required plans, programs, policies, and procedures shall not be amended or rescinded in any material respect without the prior written approval of the Deputy Comptroller or the Examiner-in-Charge (except as otherwise provided in this Order).

(3) During the term of this Order, the Bank shall revise the required plans, programs, policies, and procedures as necessary to incorporate new or changes to applicable Legal Requirements and supervisory guidelines.

(4) The Board shall ensure that the Bank has processes, personnel, and control systems to ensure implementation of and adherence to the plans, programs, policies, and procedures required by this Order.

(5) Within thirty (30) days after the end of each calendar quarter following the date of this Order, the Bank shall submit to the OCC a written progress report detailing the form and manner of all actions taken to secure compliance with the provisions of this Order and the results thereof. The progress report shall include information sufficient to validate compliance with this Order, based on a testing program acceptable to the OCC that includes, if required by the OCC, validation by third-party independent consultants acceptable to the OCC. The OCC may, in writing, discontinue the requirement for progress reports or modify the reporting schedule.

(6) All communication regarding this Order shall be sent to:

(a) Deputy Comptroller for Large Bank Supervision  
Office of the Comptroller of the Currency  
250 E Street, SW  
Washington, DC 20219

(b) Examiner-in-Charge, Large Bank Supervision  
Office of the Comptroller of the Currency  
101 South Tryon Street  
Charlotte, NC 28255

## ARTICLE XII

### COMPLIANCE AND EXTENSIONS OF TIME

(1) If the Bank contends that compliance with any provision of this Order would not be feasible or legally permissible for the Bank, or requires an extension of any timeframe within this Order, the Board shall submit a written request to the Deputy Comptroller asking for relief. Any written requests submitted pursuant to this Article shall include a statement setting forth in detail the special circumstances that prevent the Bank from complying with a provision, that require the Deputy Comptroller to exempt the Bank from a provision, or that require an extension of a timeframe within this Order.

(2) All such requests shall be accompanied by relevant supporting documentation, and to the extent requested by the Deputy Comptroller, a sworn affidavit or affidavits setting forth any other facts upon which the Bank relies. The Deputy Comptroller's decision concerning a request is final and not subject to further review.

### ARTICLE XIII

#### OTHER PROVISIONS

(1) Although this Order requires the Bank to submit certain actions, plans, programs, policies, and procedures for the review or prior written determination of no supervisory objection by the Deputy Comptroller or the Examiner-in-Charge, the Board has the ultimate responsibility for proper and sound management of the Bank.

(2) In each instance in this Order in which the Board is required to ensure adherence to, and undertake to perform certain obligations of the Bank, it is intended to mean that the Board shall:

(a) authorize and adopt such actions on behalf of the Bank as may be necessary for the Bank to perform its obligations and undertakings under the terms of this Order;

(b) require the timely reporting by Bank management of such actions directed by the Board to be taken under the terms of this Order;

(c) follow-up on any material non-compliance with such actions in a timely and appropriate manner; and

(d) require corrective action be taken in a timely manner of any material non-compliance with such actions.

(3) If, at any time, the Comptroller deems it appropriate in fulfilling the responsibilities placed upon him by the several laws of the United States to undertake any action affecting the Bank, nothing in this Order shall in any way inhibit, estop, bar, or otherwise prevent the Comptroller from so doing.

(4) This Order constitutes a settlement of the cease and desist proceeding against the Bank contemplated by the Comptroller, based on the unsafe or unsound practices described in the Comptroller's Findings set forth in Article I of this Order. Provided, however, that nothing in this Order shall prevent the Comptroller from instituting other enforcement actions against the Bank or any of its institution-affiliated parties, including, without limitation, assessment of civil money penalties, based on the findings set forth in this Order, or any other findings.

(5) This Order is and shall become effective upon its execution by the Comptroller, through his authorized representative whose hand appears below. The Order shall remain effective and enforceable, except to the extent that, and until such time as, any provision of this Order shall be amended, suspended, waived, or terminated in writing by the Comptroller.

(6) Any time limitations imposed by this Order shall begin to run from the effective date of this Order, as shown below, unless the Order specifies otherwise.

(7) The terms and provisions of this Order apply to the Bank and its subsidiaries, even though those subsidiaries are not named as parties to this Order. The Bank shall integrate any foreclosure or mortgage servicing activities done by a subsidiary into its plans, policies, programs, and processes required by this Order. The Bank shall ensure that its subsidiaries comply with all terms and provisions of this Order.

(8) This Order is intended to be, and shall be construed to be, a final order issued pursuant to 12 U.S.C. § 1818(b), and expressly does not form, and may not be construed to form,



**UNITED STATES OF AMERICA  
DEPARTMENT OF THE TREASURY  
COMPTROLLER OF THE CURRENCY**

	)	
<b>In the Matter of:</b>	)	
Bank of America, N.A.	)	AA-EC-11-12
Charlotte, NC	)	
	)	

**STIPULATION AND CONSENT TO THE ISSUANCE  
OF A CONSENT ORDER**

The Comptroller of the Currency of the United States of America (“Comptroller”) intends to impose a cease and desist order on Bank of America, N.A., Charlotte, NC (“Bank”) pursuant to 12 U.S.C. § § 1818(b), for unsafe or unsound banking practices relating to mortgage servicing and the initiation and handling of foreclosure proceedings.

The Bank, in the interest of compliance and cooperation, enters into this Stipulation and Consent to the Issuance of a Consent Order (“Stipulation”) and consents to the issuance of a Consent Order, dated April 13, 2011 (“Consent Order”);

In consideration of the above premises, the Comptroller, through his authorized representative, and the Bank, through its duly elected and acting Board of Directors, stipulate and agree to the following:

**ARTICLE I  
JURISDICTION**

(1) The Bank is a national banking association chartered and examined by the Comptroller pursuant to the National Bank Act of 1864, as amended, 12 U.S.C. § 1 *et seq.*

(2) The Comptroller is “the appropriate Federal banking agency” regarding the Bank pursuant to 12 U.S.C. §§ 1813(q) and 1818(b).

(3) The Bank is an “insured depository institution” within the meaning of 12 U.S.C. § 1818(b)(1).

(4) For the purposes of, and within the meaning of 12 C.F.R. §§ 5.3(g)(4), 5.51(c)(6), and 24.2(e)(4), this Consent Order shall not be construed to be a “cease and desist order” or “consent order”, unless the OCC informs the Bank otherwise.

## ARTICLE II AGREEMENT

(1) The Bank, without admitting or denying any wrongdoing, consents and agrees to issuance of the Consent Order by the Comptroller.

(2) The Bank consents and agrees that the Consent Order shall (a) be deemed an “order issued with the consent of the depository institution” pursuant to 12 U.S.C. § 1818(h)(2), (b) become effective upon its execution by the Comptroller through his authorized representative, and (c) be fully enforceable by the Comptroller pursuant to 12 U.S.C. § 1818(i).

(3) Notwithstanding the absence of mutuality of obligation, or of consideration, or of a contract, the Comptroller may enforce any of the commitments or obligations herein undertaken by the Bank under his supervisory powers, including 12 U.S.C. § 1818(i), and not as a matter of contract law. The Bank expressly acknowledges that neither the Bank nor the Comptroller has any intention to enter into a contract.

(4) The Bank declares that no separate promise or inducement of any kind has been made by the Comptroller, or by his agents or employees, to cause or induce the Bank to consent to the issuance of the Consent Order and/or execute the Consent Order.

(5) The Bank expressly acknowledges that no officer or employee of the Comptroller has statutory or other authority to bind the United States, the United States Treasury Department, the Comptroller, or any other federal bank regulatory agency or entity, or any officer or employee of any of those entities to a contract affecting the Comptroller's exercise of his supervisory responsibilities.

(6) The OCC releases and discharges the Bank from all potential liability for a cease and desist order that has been or might have been asserted by the OCC based on the banking practices described in the Comptroller's Findings set forth in Article I of the Consent Order, to the extent known to the OCC as of the effective date of the Consent Order. However, the banking practices alleged in Article I of the Consent Order may be utilized by the OCC in other future enforcement actions against the Bank or its institution-affiliated parties, including, without limitation, to assess civil money penalties or to establish a pattern or practice of violations or the continuation of a pattern or practice of violations. This release shall not preclude or affect any right of the OCC to determine and ensure compliance with the terms and provisions of this Stipulation or the Consent Order.

(7) The terms and provisions of the Stipulation and the Consent Order shall be binding upon, and inure to the benefit of, the parties hereto and their successors in interest. Nothing in this Stipulation or the Consent Order, express or implied, shall give to any person or entity, other than the parties hereto, and their successors hereunder, any

benefit or any legal or equitable right, remedy or claim under this Stipulation or the Consent Order.

ARTICLE III  
WAIVERS

- (1) The Bank, by consenting to this Stipulation, waives:
  - (a) the issuance of a Notice of Charges pursuant to 12 U.S.C. § 1818(b);
  - (b) any and all procedural rights available in connection with the issuance of the Consent Order;
  - (c) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. §§ 1818(b) and (h), 12 C.F.R. Part 19;
  - (d) all rights to seek any type of administrative or judicial review of the Consent Order;
  - (e) any and all claims for fees, costs or expenses against the Comptroller, or any of his agents or employees, related in any way to this enforcement matter or this Consent Order, whether arising under common law or under the terms of any statute, including, but not limited to, the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and
  - (f) any and all rights to challenge or contest the validity of the Consent Order.

ARTICLE IV  
OTHER PROVISIONS

(1) The provisions of this Stipulation shall not inhibit, estop, bar, or otherwise prevent the Comptroller from taking any other action affecting the Bank if, at any time, it deems it appropriate to do so to fulfill the responsibilities placed upon it by the several laws of the United States of America.

(2) Nothing in this Stipulation shall preclude any proceedings brought by the Comptroller to enforce the terms of this Consent Order, and nothing in this Stipulation constitutes, nor shall the Bank contend that it constitutes, a waiver of any right, power, or authority of any other representative of the United States or an agency thereof, including, without limitation, the United States Department of Justice, to bring other actions deemed appropriate.

(3) The terms of the Stipulation and the Consent Order are not subject to amendment or modification by any extraneous expression, prior agreements or prior arrangements between the parties, whether oral or written.

IN TESTIMONY WHEREOF, the undersigned, authorized by the Comptroller as his representative, has hereunto set her hand on behalf of the Comptroller.

/s/

---

Sally G. Belshaw  
Deputy Comptroller  
Large Bank Supervision

April 13, 2011

---

Date

IN TESTIMONY WHEREOF, the undersigned, as the duly elected and acting Board of Directors of the Bank, have hereunto set their hands on behalf of the Bank.

/s/  
Susan S. Bies

3/29/11  
Date

/s/  
Frank P. Bramble, Sr.

3/29/11  
Date

/s/  
Virgis W. Colbert

3/29/11  
Date

/s/  
Charles K. Gifford

3/29/11  
Date

/s/  
Charles O. Holliday, Jr.

3/29/11  
Date

/s/  
D. Paul Jones, Jr.

3/29/11  
Date

/s/  
Monica C. Lozano

3/29/11  
Date

/s/  
Thomas J. May

3/29/11  
Date

/s/  
Brian T. Moynihan

3/29/11  
Date

/s/  
Donald E. Powell

3/29/11  
Date

/s/  
Charles O. Rossotti

3/29/11  
Date

/s/  
Robert W. Scully

3/29/11  
Date

# **EXHIBIT 17**

(United States Comptroller finds Bank of America illegally Foreclosed)

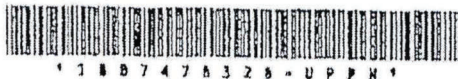
Paying Agent - Rust Consulting, Inc.  
P.O. Box 8065  
Faribault, MN 55021-9465

An Important message directed by Federal Banking Regulators-  
the Office of the Comptroller of the Currency and  
the Board of Governors of the Federal Reserve System

PRESORTED  
FIRST-CLASS MAIL  
U.S. POSTAGE  
PAID  
Rust Consulting, Inc.

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10080074092-0077-661-04  
PAMELA BENNETT  
PO BOX 675733  
RANCHO SANTA FE, CA 92087-5733

OPEN NOW FOR MORE INFORMATION

Usted es elegible para obtener una compensación según órdenes emitidas  
por los reguladores federales de la banca.

Atención:

You are eligible for compensation pursuant to orders issued by  
Federal Banking Regulators.

**Attention**

## Payment related to the Independent Foreclosure Review

You are eligible to receive a payment as the result of an agreement between **Bank of America** and federal banking regulators—the Office of the Comptroller of the Currency and the Federal Reserve Board—announced in January. This payment is related to an enforcement action regarding deficiencies in the mortgage servicing and foreclosure processes of **Bank of America**. Payment will be made by the paying agent—Rust Consulting, Inc.

0229

**You will receive a check or additional information about your payment from Rust Consulting within approximately four to eight weeks. Please watch your mail.**

Only Rust Consulting will contact you regarding your check or to request additional information if required to process your payment. Always use caution when providing personal information.

If you have questions, you may call toll free at 1-888-952-9105 or visit

[www.independentforeclosurereview.com](http://www.independentforeclosurereview.com)

[www.occ.treas.gov](http://www.occ.treas.gov)

[www.federalreserve.gov](http://www.federalreserve.gov)

Si tiene preguntas, puede llamar al número de teléfono 1-888-952-9105 para hablar con un representante.

Assistance is also available from the toll-free number in more than 200 languages, including Chinese, Korean, Vietnamese, Tagalog, Hmong, and Russian.

提供中文幫助。

한국어 도움을 제공합니다.

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Available ang tulong sa Wikang Tagalog.

Peb nruaj cov neeg hais lus (Hmoob peb ne).

Помощь на русском языке.

# **EXHIBIT 18**

(Judge Jacqueline Stern and her Clerk changed Docket)

**SUPERIOR COURT OF CALIFORNIA  
County of SAN DIEGO**

**Register of Actions Notice**

Case Number:	37-2015-00024336-CU-FR-NC	Filing Date:	07/22/2015
Case Title:	Bennett vs. Bank of America NA [IMAGED]	Case Age:	461 days
Case Status:	Pending	Location:	North County
Case Category:	Civil - Unlimited	Judicial Officer:	Jacqueline M. Stern
Case Type:	Fraud	Department:	N-27

**Future Events**

Date	Time	Department	Event
11/04/2016	01:30 PM	N-27	Demurrer / Motion to Strike
11/04/2016	01:30 PM	N-27	Motion Hearing (Civil)
11/04/2016	01:30 PM	N-27	Demurrer / Motion to Strike
11/18/2016	01:30 PM	N-27	Motion Hearing (Civil)
01/06/2017	10:00 AM	N-27	Trial Readiness Conference (Civil)
01/20/2017	08:30 AM	N-27	Civil Jury Trial

**Participants**

Name	Role	Representation
Bank of America NA	Defendant	Ede, Jered T
Bennett, James	Plaintiff	Self-Represented
Bennett, Pamela	Plaintiff	Self-Represented

**Representation**

Name	Address	Phone Number
BENNETT, JAMES	P O Box 675733 Rancho Santa Fe CA 92067	(682) 241-0319
BENNETT, PAMELA	P O Box 675733 Rancho Santa Fe CA 92067	(682) 241-0319
EDE, JERED T	GREEN & HALL LLP 1851 East First Street 10th Floor Santa Ana CA 92705 4052	(714) 918-7000

ROA#	Entry Date	Short/Long Entry	Filed By
1	07/22/2015	Complaint filed by Bennett, Pamela.	
2	07/22/2015	Original Summons filed by Bennett, Pamela.	
3	07/22/2015	Civil Case Cover Sheet filed by Bennett, Pamela.	
4	07/22/2015	Request to Waive Court Fees filed by Bennett, Pamela.	
5	07/22/2015	Summons issued.	
6	07/22/2015	Case assigned to Judicial Officer Stern, Jacqueline.	
7	07/22/2015	Civil Case Management Conference scheduled for 02/19/2016 at 09:00:00 AM at North County in N-27 Jacqueline M. Stern.	
8	07/22/2015	Case initiation form printed.	
9	07/22/2015	Order on Court Fee Waiver filed by Bennett, Pamela.	
10	08/05/2015	Ex Parte scheduled for 08/11/2015 at 08:30:00 AM at North County in N-27 Jacqueline M. Stern.	
11	08/10/2015	Ex Parte Application - Other and Supporting Documents filed by Bennett, Pamela.	Bennett, Pamela (Plaintiff)
12	08/11/2015	Minutes finalized for Ex Parte heard 08/11/2015 08:30:00 AM.	
13	08/11/2015	Notice of Pendency of Action filed by Bennett, Pamela. Refers to: Bank of America NA	Bennett, Pamela (Plaintiff)
14	10/20/2015	Demurrer / Motion to Strike scheduled for 02/19/2016 at 01:30:00 PM at North County in N-27 Jacqueline M. Stern.	

15	10/20/2015	Motion Hearing (Civil) scheduled for 02/19/2016 at 01:30:00 PM at North County in N-27 Jacqueline M. Stern.	
16	10/20/2015	The Civil Case Management Conference was rescheduled to 02/19/2016 at 01:30:00 PM in N-27 before Jacqueline M. Stern at North County.	
17	10/20/2015	Civil Case Management Conference scheduled for 02/19/2016 at 01:30:00 PM at North County in N-27 Jacqueline M. Stern.	
18	10/23/2015	Demurrer (02/19/2016) filed by Bank of America NA.	Bank of America NA (Defendant)
19	10/23/2015	Motion - Other (02/19/2016) filed by Bank of America NA.	Bank of America NA (Defendant)
20	10/28/2015	Notice of Related Case filed by Bank of America NA.	Bank of America NA (Defendant)
21	01/05/2016	Motion Hearing (Civil) scheduled for 04/22/2016 at 01:30:00 PM at North County in N-27 Jacqueline M. Stern.	
22	01/05/2016	Demurrer / Motion to Strike scheduled for 02/19/2016 at 01:30:00 PM at North County in N-27 Jacqueline M. Stern.	
23	01/07/2016	Motion - Other (to transfer UD action and to consolidate) filed by Bank of America NA.	Bank of America NA (Defendant)
24	01/20/2016	Motion to Strike (2/19/16) filed by Bennett, Pamela.	Bennett, Pamela (Plaintiff)
25	02/02/2016	Amended Complaint (FIRST AMENDED) filed by Bennett, Pamela. Refers to: Bank of America NA	Bennett, Pamela (Plaintiff); Bennett, James (Plaintiff)
26	02/02/2016	Case Management Statement filed by Bennett, James; Bennett, Pamela.	Bennett, James (Plaintiff); Bennett, Pamela (Plaintiff)
27	02/04/2016	Opposition to Noticed Motion and Supporting Declarations (2-19-16) filed by Bank of America NA.	Bank of America NA (Defendant)
28	02/04/2016	Request for Judicial Notice (2-19-16) filed by Bank of America NA.	Bank of America NA (Defendant)
29	02/03/2016	Opposition to Noticed Motion and Supporting Declarations (2-19-16 demurrer) filed by Bennett, James; Bennett, Pamela.	Bennett, James (Plaintiff); Bennett, Pamela (Plaintiff)
30	02/03/2016	Opposition to Noticed Motion and Supporting Declarations (2-19-16 mtn to expunge) filed by Bennett, James; Bennett, Pamela.	Bennett, James (Plaintiff); Bennett, Pamela (Plaintiff)
31	02/03/2016	Request for Judicial Notice (2-19-16) filed by Bennett, James; Bennett, Pamela.	Bennett, James (Plaintiff); Bennett, Pamela (Plaintiff)
32	02/04/2016	Case Management Statement filed by Bank of America NA.	Bank of America NA (Defendant)
33	02/16/2016	Reply to Opposition - Other filed by Bennett, Pamela.	Bennett, Pamela (Plaintiff)
34	02/18/2016	Tentative Ruling for Demurrer / Motion to Strike published.	
36	02/18/2016	Tentative Ruling for Motion Hearing (Civil) published.	
37	02/18/2016	Tentative Ruling for Demurrer / Motion to Strike published.	
40	02/19/2016	Civil Case Management Conference continued pursuant to party's motion to 05/06/2016 at 09:00AM before Judge Jacqueline M. Stern.	
41	02/19/2016	Minutes finalized for Civil Case Management Conference heard 02/19/2016 01:30:00 PM.	
42	02/19/2016	Notice of Rescheduled Hearing SD generated.	
43	02/19/2016	Minutes finalized for Demurrer / Motion to Strike heard 02/19/2016 01:30:00 PM.	
44	02/19/2016	Minutes finalized for Demurrer / Motion to Strike heard 02/19/2016 01:30:00 PM.	
45	02/19/2016	Minutes finalized for Motion Hearing (Civil) heard 02/19/2016 01:30:00 PM.	
46	02/22/2016	Order - Other (Proposed Order Expunging Notice of Pendency of Action (Lis Pendens) and Award of Legal Fees and Costs Against Plaintiff Pamela Bennett in the Sum of \$1,685.00) submitted by The Superior Court of San Diego rejected on 02/22/2016.	
47	03/10/2016	Notice of Ruling filed by Bank of America NA.	Bank of America NA (Defendant)

48	03/10/2016	Notice of Ruling (on plt pamela 2/19/16) filed by Bank of America NA.	Bank of America NA (Defendant)
49	03/10/2016	Notice of Ruling filed by Bank of America NA.	Bank of America NA (Defendant)
50	03/18/2016	Demurrer / Motion to Strike scheduled for 05/27/2016 at 01:30:00 PM at North County in N-27 Jacqueline M. Stern.	
51	03/18/2016	Demurrer / Motion to Strike scheduled for 05/27/2016 at 01:30:00 PM at North County in N-27 Jacqueline M. Stern.	
52	03/18/2016	Proof of Service of 10-day Summons & Complaint - Substitute filed by Bennett, Pamela. Refers to: Bank of America NA	Bennett, Pamela (Plaintiff)
53	03/18/2016	Proof of Service filed by Bennett, Pamela; Bennett, James. Refers to: Bank of America NA	Bennett, Pamela (Plaintiff); Bennett, James (Plaintiff)
54	03/22/2016	Request for Entry of Default (NOT ENTERED) filed by Bennett, James; Bennett, Pamela. Refers to: Bank of America NA	Bennett, James (Plaintiff); Bennett, Pamela (Plaintiff)
55	03/22/2016	The default was denied as to Bank of America NA on Amended Complaint filed by Bennett, Pamela; Bennett, James .	
56	03/21/2016	Demurrer (5/27/16) filed by Bank of America NA.	Bank of America NA (Defendant)
57	03/21/2016	Motion to Strike (5/27/16) filed by Bank of America NA.	Bank of America NA (Defendant)
58	03/22/2016	Order (Court of Appeal order) filed by The Superior Court of San Diego.	
59	03/22/2016	Request for Entry of Default filed by Bennett, James; Bennett, Pamela. Refers to: Bank of America NA	Bennett, James (Plaintiff); Bennett, Pamela (Plaintiff)
60	03/22/2016	The default was denied as to Bank of America NA on Amended Complaint filed by Bennett, Pamela; Bennett, James .	
61	04/08/2016	Declaration of Prejudice CCP 170.6 submitted by Bennett, James received but not filed on 04/08/2016.	Bennett, James (Plaintiff)
62	04/08/2016	Opposition to Noticed Motion and Supporting Declarations (4/22 MTN TO TRANSFER UNLAWFUL DETAINER ACTION TO UNLIMITED JURISDICTION AND TO CONSOLIDATE) filed by Bennett, James; Bennett, Pamela.	Bennett, James (Plaintiff); Bennett, Pamela (Plaintiff)
63	04/08/2016	Declaration of Prejudice CCP 170.6 (DENIED) filed by Bennett, James.	Bennett, James (Plaintiff)
64	04/13/2016	Declaration of Prejudice CCP 170.6 (DENIED) filed by Bennett, James.	Bennett, James (Plaintiff)
65	04/19/2016	Case Management Statement filed by Bank of America NA.	Bank of America NA (Defendant)
66	04/19/2016	Notice of Intent to Appear Telephonically filed by Bank of America NA.	Bank of America NA (Defendant)
67	04/21/2016	Tentative Ruling for Motion Hearing (Civil) published.	
68	04/21/2016	Case Management Statement filed by Bennett, Pamela; Bennett, James. Refers to: Bank of America NA	Bennett, Pamela (Plaintiff); Bennett, James (Plaintiff)
69	04/22/2016	Minutes finalized for Motion Hearing (Civil) heard 04/22/2016 01:30:00 PM. (Subsequently amended - See ROA # 70)	
70	04/22/2016	Minutes finalized for Motion Hearing (Civil) heard 04/22/2016 01:30:00 PM. (As Amended)	
71	04/27/2016	Notice of Ruling filed by Bank of America NA. Refers to: Bennett, Pamela	Bank of America NA (Defendant)
72	05/02/2016	Notice of Intent to Appear Telephonically filed by Bank of America NA.	Bank of America NA (Defendant)
75	05/06/2016	Pursuant to California Rules of Court 3.714, the Court, after having met and conferred with counsel, categorizes this case as one that will be disposed of within 18 months	
76	05/06/2016	Trial Readiness Conference (Civil) scheduled for 01/06/2017 at 10:00AM before Judge Jacqueline M. Stern.	

77	05/06/2016	Civil Jury Trial scheduled for 01/20/2017 at 08:30AM before Judge Jacqueline M. Stern.	
78	05/06/2016	Jury demanded by plaintiffs.	
79	05/06/2016	Minutes finalized for Civil Case Management Conference heard 05/06/2016 09:00:00 AM.	
80	05/06/2016	Notice of Hearing SD generated.	
81	05/06/2016	Notice of Hearing SD generated.	
82	05/05/2016	Notice of Lien (on proceeds on judgment) filed by Bennett, Pamela.	Bennett, Pamela (Plaintiff)
83	05/16/2016	Opposition to Noticed Motion and Supporting Declarations (5/27 MTN TO STRIKE) filed by Bennett, James; Bennett, Pamela.	Bennett, James (Plaintiff); Bennett, Pamela (Plaintiff)
84	05/16/2016	Opposition to Noticed Motion and Supporting Declarations (5/27 DEMURRER AND PLTFs REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF PLTFs OPPO TO DEFTs DEMURRER) filed by Bennett, James; Bennett, Pamela.	Bennett, James (Plaintiff); Bennett, Pamela (Plaintiff)
85	05/20/2016	Request for Judicial Notice (5/27 SUPPLEMENTAL REQUEST) filed by Bank of America NA.	Bank of America NA (Defendant)
86	05/24/2016	Summary Judgment / Summary Adjudication (Civil) scheduled for 08/05/2016 at 01:30:00 PM at North County in N-27 Jacqueline M. Stern.	
87	05/24/2016	Motion Hearing (Civil) scheduled for 08/05/2016 at 01:30:00 PM at North County in N-27 Jacqueline M. Stern.	
88	05/23/2016	Notice of Intent to Appear Telephonically filed by Bank of America NA.	Bank of America NA (Defendant)
89	05/25/2016	Declaration - Other (5/27 APPLICATION TO STRIKE PORTIONS OF DEFTs DEMURRER) filed by Bennett, Pamela; Bennett, James.	Bennett, Pamela (Plaintiff); Bennett, James (Plaintiff)
90	05/26/2016	Tentative Ruling for Demurrer / Motion to Strike published.	
91	05/26/2016	Tentative Ruling for Demurrer / Motion to Strike published.	
94	05/27/2016	Demurrer / Motion to Strike continued pursuant to Court's motion to 08/12/2016 at 01:30PM before Judge Jacqueline M. Stern.	
95	05/27/2016	Minutes finalized for Demurrer / Motion to Strike heard 05/27/2016 01:30:00 PM.	
98	05/27/2016	Demurrer / Motion to Strike continued pursuant to Court's motion to 08/12/2016 at 01:30PM before Judge Jacqueline M. Stern.	
99	05/27/2016	Minutes finalized for Demurrer / Motion to Strike heard 05/27/2016 01:30:00 PM.	
100	06/10/2016	Ex Parte scheduled for 06/22/2016 at 08:30:00 AM at North County in N-27 Jacqueline M. Stern.	
101	06/06/2016	Notice - Other (Continued Motion set for 8/12/16) filed by Bank of America NA. Refers to: Bennett, Pamela; Bennett, James	Bank of America NA (Defendant)
102	06/06/2016	Notice - Other (Continued Demurrer set for 8/12/16) filed by Bank of America NA. Refers to: Bennett, Pamela; Bennett, James	Bank of America NA (Defendant)
103	06/17/2016	Ex Parte Application - Other and Supporting Documents (6/22/16- to Advance Hearing Date on Def't's Demurrer and Overrule) filed by Bennett, James; Bennett, Pamela. Refers to: Bank of America NA	Bennett, James (Plaintiff); Bennett, Pamela (Plaintiff)
104	06/14/2016	Notice - Other (NOTICE OF NON-RECEIPT) filed by Bank of America NA.	Bank of America NA (Defendant)
105	06/22/2016	Minutes finalized for Ex Parte heard 06/22/2016 08:30:00 AM.	
106	06/22/2016	Request to Waive Court Fees filed by Bennett, James.	Bennett, James (Plaintiff)
107	06/23/2016	Order on Court Fee Waiver filed by Bennett, James.	Bennett, James (Plaintiff)

108	05/16/2016	Application - Other (5/27 APP TO STRIKE PORTIONS OF DEFTS DEMURRER) filed by Bennett, James; Bennett, Pamela.	Bennett, James (Plaintiff); Bennett, Pamela (Plaintiff)
109	05/16/2016	Request for Judicial Notice (5/27 NOTICE IN SUPPORT OF PLTFS OPPO TO DEFTS DEMURRER AND MTN TO STRIKE) filed by Bennett, James; Bennett, Pamela.	Bennett, James (Plaintiff); Bennett, Pamela (Plaintiff)
110	07/08/2016	Motion for Summary Judgment and/or Adjudication (8/5/16) filed by Bennett, Pamela; Bennett, James.	Bennett, Pamela (Plaintiff); Bennett, James (Plaintiff)
111	07/11/2016	Declaration - Other (5/27 RE: CCP 430.41(a) IN SUPPORT OF DEMUURER AND MOTION TO STRIKE) filed by Bank of America NA.	Bank of America NA (Defendant)
112	07/21/2016	Opposition to Noticed Motion and Supporting Declarations (8/5 SUMMARY JUDGMENT) filed by Bank of America NA.	Bank of America NA (Defendant)
113	07/21/2016	Statement - Other (8/5 SUMMARY JUDGMENT) filed by Bank of America NA.	Bank of America NA (Defendant)
114	07/21/2016	Request for Judicial Notice (8/5 SUMMARY JUDGMENT) filed by Bank of America NA.	Bank of America NA (Defendant)
115	07/28/2016	Notice of Intent to Appear Telephonically (8/5/16) filed by Bank of America NA.	Bank of America NA (Defendant)
116	07/29/2016	Reply to Opposition of Noticed Motion and Supporting Declarations (8/5 SUMMARY JUDGMENT) filed by Bennett, Pamela; Bennett, James.	Bennett, Pamela (Plaintiff); Bennett, James (Plaintiff)
117	07/29/2016	Order - Other (8/5 PROPOSED ORDER FOR PLTFS SUMMARY JUDGMENT) submitted by Bennett, James; Bennett, Pamela received but not filed on 07/29/2016.	Bennett, James (Plaintiff); Bennett, Pamela (Plaintiff)
118	07/29/2016	Objections (8/5 EVIDENTIARY OBJECTIONS) filed by Bennett, Pamela; Bennett, James.	Bennett, Pamela (Plaintiff); Bennett, James (Plaintiff)
119	07/29/2016	Order - Other (8/5 EVIDENTIARY OBJECTIONS) submitted by Bennett, James; Bennett, Pamela received but not filed on 07/29/2016.	Bennett, James (Plaintiff); Bennett, Pamela (Plaintiff)
120	07/29/2016	Opposition to Noticed Motion and Supporting Declarations (8/12 SUPPLEMENTAL OPPOSITION TO DEFTS DEMURRER) filed by Bennett, Pamela; Bennett, James.	Bennett, Pamela (Plaintiff); Bennett, James (Plaintiff)
121	07/29/2016	Affidavit - Other (8/12 SUPPORT OF PLTFS SUPPLEMENTAL OPPO TO DEMURRER) filed by Bennett, James; Bennett, Pamela.	Bennett, James (Plaintiff); Bennett, Pamela (Plaintiff)
122	08/04/2016	Tentative Ruling for Motion Hearing (Civil) published.	
123	08/04/2016	Tentative Ruling for Summary Judgment / Summary Adjudication (Civil) published.	
124	08/05/2016	Minutes finalized for Motion Hearing (Civil) heard 08/05/2016 01:30:00 PM.	
125	08/05/2016	Minutes finalized for Summary Judgment / Summary Adjudication (Civil) heard 08/05/2016 01:30:00 PM.	
126	08/08/2016	Declaration of Prejudice CCP 170.6 filed by Bennett, James.	Bennett, James (Plaintiff)
127	08/09/2016	Summary Judgment / Summary Adjudication (Civil) scheduled for 11/18/2016 at 01:30:00 PM at North County in N-27 Jacqueline M. Stern.	
128	08/11/2016	Tentative Ruling for Demurrer / Motion to Strike published.	
130	08/11/2016	Tentative Ruling for Demurrer / Motion to Strike published.	
131	08/12/2016	Minutes finalized for Demurrer / Motion to Strike heard 08/12/2016 01:30:00 PM.	
132	08/12/2016	Minutes finalized for Demurrer / Motion to Strike heard 08/12/2016 01:30:00 PM.	
133	08/19/2016	Motion Hearing (Civil) scheduled for 09/22/2016 at 01:30:00 PM at North County in N-27 Jacqueline M. Stern.	
134	08/22/2016	Motion for Reconsideration filed by Bennett, James; Bennett, Pamela.	Bennett, James (Plaintiff); Bennett, Pamela (Plaintiff)

135	08/25/2016	Answer (To First Amended Complaint) filed by Bank of America NA. Refers to: Bennett, Pamela; Bennett, James	Bank of America NA (Defendant)
136	08/30/2016	Motion Hearing (Civil) scheduled for 11/04/2016 at 01:30:00 PM at North County in N-27 Jacqueline M. Stern.	
137	08/30/2016	Motion for Summary Judgment and/or Adjudication filed by Bennett, James; Bennett, James.	Bennett, James (Plaintiff); Bennett, James (Plaintiff)
138	08/30/2016	Motion - Other (NOTICE TO ADD DOE DEFENDANTS ONE AND TWO) filed by Bennett, James; Bennett, Pamela.	Bennett, James (Plaintiff); Bennett, Pamela (Plaintiff)
139	08/30/2016	Opposition to Noticed Motion and Supporting Declarations (9/22 MTN FOR RECONSIDERATION OF THE COURTS 8/12 ORDER) filed by Bank of America NA.	Bank of America NA (Defendant)
140	09/01/2016	Demurrer / Motion to Strike scheduled for 11/04/2016 at 01:30:00 PM at North County in N-27 Jacqueline M. Stern.	
141	09/01/2016	Demurrer / Motion to Strike scheduled for 11/04/2016 at 01:30:00 PM at North County in N-27 Jacqueline M. Stern.	
142	08/19/2016	Notice of Ruling (on Motion for Summary Judgment) filed by Bank of America NA. Refers to: Bennett, Pamela; Bennett, James	Bank of America NA (Defendant)
144	09/06/2016	Motion to Strike (11/4/16) filed by Bennett, James; Bennett, Pamela.	Bennett, James (Plaintiff); Bennett, Pamela (Plaintiff)
145	09/06/2016	Demurrer (11/4/16) filed by Bennett, James; Bennett, Pamela.	Bennett, James (Plaintiff); Bennett, Pamela (Plaintiff)
146	09/06/2016	Request for Judicial Notice filed by Bennett, James; Bennett, Pamela.	Bennett, James (Plaintiff); Bennett, Pamela (Plaintiff)
147	09/15/2016	Reply to Opposition of Noticed Motion and Supporting Declarations (9/22 MTN FOR RECONSIDERATION) filed by Bennett, James; Bennett, Pamela.	Bennett, James (Plaintiff); Bennett, Pamela (Plaintiff)
148	09/15/2016	Request for Judicial Notice (9/22) filed by Bennett, James; Bennett, Pamela.	Bennett, James (Plaintiff); Bennett, Pamela (Plaintiff)
149	08/31/2016	Order (Court of Appeal order) filed by The Superior Court of San Diego.	
150	09/21/2016	Tentative Ruling for Motion Hearing (Civil) published.	
151	09/22/2016	Minutes finalized for Motion Hearing (Civil) heard 09/22/2016 01:30:00 PM.	
152	09/23/2016	Proof of Service by Mail (Plaintiff's Reply to Defendant's Opposition) filed by Bennett, Pamela; Bennett, James. Refers to: Bank of America NA	Bennett, Pamela (Plaintiff); Bennett, James (Plaintiff)
153	09/26/2016	Notice of Ruling filed by Bennett, James; Bennett, Pamela.	Bennett, James (Plaintiff); Bennett, Pamela (Plaintiff)
154	10/03/2016	The Motion Hearing (Civil) was rescheduled to 11/18/2016 at 01:30:00 PM in N-27 before Jacqueline M. Stern at North County.	
155	10/03/2016	Motion Hearing (Civil) scheduled for 11/18/2016 at 01:30:00 PM at North County in N-27 Jacqueline M. Stern.	
156	10/11/2016	Notice - Other (NOTICE OF APPEAL) filed by Bennett, James; Bennett, Pamela.	Bennett, James (Plaintiff); Bennett, Pamela (Plaintiff)
157	10/13/2016	Order - Other (Court's Order Sustaining Defendant's Demurrer to Causes of Action One and Seven of the Plaintiffs' First Amended Complaint and Dismissal of Same) filed by Bennett, Pamela; Bennett, James. Refers to: Bank of America NA	Bennett, Pamela (Plaintiff); Bennett, James (Plaintiff)
158	10/18/2016	Judgment submitted by Bennett, James; Bennett, Pamela rejected on 10/18/2016. Refers to: Bank of America NA	Bennett, James (Plaintiff); Bennett, Pamela (Plaintiff)
159	10/20/2016	Substitution of Attorney filed by Bank of America NA.	Bank of America NA (Defendant)
160	10/21/2016	Motion - Other (11/18/16) filed by Bennett, James; Bennett, Pamela.	Bennett, James (Plaintiff); Bennett, Pamela (Plaintiff)
161	10/21/2016	Request for Judicial Notice (11/18/16) filed by Bennett, James; Bennett, Pamela.	Bennett, James (Plaintiff); Bennett, Pamela (Plaintiff)

**SUPERIOR COURT OF CALIFORNIA  
County of SAN DIEGO**

**Register of Actions Notice**

Case Number:	37-2015-00024336-CU-FR-NC	Filing Date:	07/22/2015
Case Title:	Bennett vs. Bank of America NA [IMAGED]	Case Age:	461 days
Case Status:	Pending	Location:	North County
Case Category:	Civil - Unlimited	Judicial Officer:	Jacqueline M. Stern
Case Type:	Fraud	Department:	N-27

**Future Events**

Date	Time	Department	Event
11/04/2016	01:30 PM	N-27	Demurrer / Motion to Strike
11/04/2016	01:30 PM	N-27	Motion Hearing (Civil)
11/04/2016	01:30 PM	N-27	Demurrer / Motion to Strike
11/18/2016	01:30 PM	N-27	Motion Hearing (Civil)
01/06/2017	10:00 AM	N-27	Trial Readiness Conference (Civil)
01/20/2017	08:30 AM	N-27	Civil Jury Trial

**Participants**

Name	Role	Representation
Bennett, James	Plaintiff	Self-Represented
Bennett, Pamela	Plaintiff	Self-Represented
Deutsche Bank National Trust Company as Trustee for Holders of The GSR Mortgage Loan Trust 2007-OA1; AKA : Bank of America, N.A. for the Benefit of Deutsche Bank National Trust Company, as Trustee for the Holders of the GSR Mortgage Loan Trust 2007-OA1	Defendant	Burnett, Timothy A.; Ede, Jered T

**Representation**

Name	Address	Phone Number
BENNETT, JAMES	P O Box 675733 Rancho Santa Fe CA 92067	(682) 241-0319
BENNETT, PAMELA	P O Box 675733 Rancho Santa Fe CA 92067	(682) 241-0319
BURNETT, TIMOTHY A	1851 E First Street 10th Floor Santa Ana CA 92705	
EDE, JERED T	GREEN & HALL LLP 1851 East First Street 10th Floor Santa Ana CA 92705 4052	(714) 918-7000

ROA#	Entry Date	Short/Long Entry	Filed By
1	07/22/2015	Complaint filed by Bennett, Pamela.	
2	07/22/2015	Original Summons filed by Bennett, Pamela.	
3	07/22/2015	Civil Case Cover Sheet filed by Bennett, Pamela.	
4	07/22/2015	Request to Waive Court Fees filed by Bennett, Pamela.	
5	07/22/2015	Summons issued.	
6	07/22/2015	Case assigned to Judicial Officer Stern, Jacqueline.	
7	07/22/2015	Civil Case Management Conference scheduled for 02/19/2016 at 09:00:00 AM at North County in N-27 Jacqueline M. Stern.	
8	07/22/2015	Case initiation form printed.	
9	07/22/2015	Order on Court Fee Waiver filed by Bennett, Pamela.	
10	08/05/2015	Ex Parte scheduled for 08/11/2015 at 08:30:00 AM at North County in N-27 Jacqueline M. Stern.	
11	08/10/2015	Ex Parte Application - Other and Supporting Documents filed by Bennett, Pamela.	Bennett, Pamela (Plaintiff)

12	08/11/2015	Minutes finalized for Ex Parte heard 08/11/2015 08:30:00 AM.	
13	08/11/2015	Notice of Pendency of Action filed by Bennett, Pamela. Refers to: Deutsche Bank National Trust Company as Trustee for Holders of The GSR Mortgage Loan Trust 2007-OA1	Bennett, Pamela (Plaintiff)
14	10/20/2015	Demurrer / Motion to Strike scheduled for 02/19/2016 at 01:30:00 PM at North County in N-27 Jacqueline M. Stern.	
15	10/20/2015	Motion Hearing (Civil) scheduled for 02/19/2016 at 01:30:00 PM at North County in N-27 Jacqueline M. Stern.	
16	10/20/2015	The Civil Case Management Conference was rescheduled to 02/19/2016 at 01:30:00 PM in N-27 before Jacqueline M. Stern at North County.	
17	10/20/2015	Civil Case Management Conference scheduled for 02/19/2016 at 01:30:00 PM at North County in N-27 Jacqueline M. Stern.	
18	10/23/2015	Demurrer (02/19/2016) filed by Bank of America NA.	Deutsche Bank National Trust Company as Trustee for Holders of The GSR Mortgage Loan Trust 2007-OA1 (Defendant)
19	10/23/2015	Motion - Other (02/19/2016) filed by Bank of America NA.	Deutsche Bank National Trust Company as Trustee for Holders of The GSR Mortgage Loan Trust 2007-OA1 (Defendant)
20	10/28/2015	Notice of Related Case filed by Bank of America NA.	Deutsche Bank National Trust Company as Trustee for Holders of The GSR Mortgage Loan Trust 2007-OA1 (Defendant)
21	01/05/2016	Motion Hearing (Civil) scheduled for 04/22/2016 at 01:30:00 PM at North County in N-27 Jacqueline M. Stern.	
22	01/05/2016	Demurrer / Motion to Strike scheduled for 02/19/2016 at 01:30:00 PM at North County in N-27 Jacqueline M. Stern.	
23	01/07/2016	Motion - Other (to transfer UD action and to consolidate) filed by Bank of America NA.	Deutsche Bank National Trust Company as Trustee for Holders of The GSR Mortgage Loan Trust 2007-OA1 (Defendant)
24	01/20/2016	Motion to Strike (2/19/16) filed by Bennett, Pamela.	Bennett, Pamela (Plaintiff)
25	02/02/2016	Amended Complaint (FIRST AMENDED) filed by Bennett, Pamela. Refers to: Deutsche Bank National Trust Company as Trustee for Holders of The GSR Mortgage Loan Trust 2007-OA1	Bennett, Pamela (Plaintiff); Bennett, James (Plaintiff)
26	02/02/2016	Case Management Statement filed by Bennett, James; Bennett, Pamela.	Bennett, James (Plaintiff); Bennett, Pamela (Plaintiff)
27	02/04/2016	Opposition to Noticed Motion and Supporting Declarations (2-19-16) filed by Bank of America NA.	Deutsche Bank National Trust Company as Trustee for Holders of The GSR Mortgage Loan Trust 2007-OA1 (Defendant)
28	02/04/2016	Request for Judicial Notice (2-19-16) filed by Bank of America NA.	Deutsche Bank National Trust Company as Trustee for Holders of The GSR Mortgage Loan Trust 2007-OA1 (Defendant)
29	02/03/2016	Opposition to Noticed Motion and Supporting Declarations (2-19-16 demurrer) filed by Bennett, James; Bennett, Pamela.	Bennett, James (Plaintiff); Bennett, Pamela (Plaintiff)
30	02/03/2016	Opposition to Noticed Motion and Supporting Declarations (2-19-16 mtn to expunge) filed by Bennett, James; Bennett, Pamela.	Bennett, James (Plaintiff); Bennett, Pamela (Plaintiff)
31	02/03/2016	Request for Judicial Notice (2-19-16) filed by Bennett, James; Bennett, Pamela.	Bennett, James (Plaintiff); Bennett, Pamela (Plaintiff)

32	02/04/2016	Case Management Statement filed by Bank of America NA.	Deutsche Bank National Trust Company as Trustee for Holders of The GSR Mortgage Loan Trust 2007-OA1 (Defendant)
33	02/16/2016	Reply to Opposition - Other filed by Bennett, Pamela.	Bennett, Pamela (Plaintiff)
34	02/18/2016	Tentative Ruling for Demurrer / Motion to Strike published.	
36	02/18/2016	Tentative Ruling for Motion Hearing (Civil) published.	
37	02/18/2016	Tentative Ruling for Demurrer / Motion to Strike published.	
40	02/19/2016	Civil Case Management Conference continued pursuant to party's motion to 05/06/2016 at 09:00AM before Judge Jacqueline M. Stern.	
41	02/19/2016	Minutes finalized for Civil Case Management Conference heard 02/19/2016 01:30:00 PM.	
42	02/19/2016	Notice of Rescheduled Hearing SD generated.	
43	02/19/2016	Minutes finalized for Demurrer / Motion to Strike heard 02/19/2016 01:30:00 PM.	
44	02/19/2016	Minutes finalized for Demurrer / Motion to Strike heard 02/19/2016 01:30:00 PM.	
45	02/19/2016	Minutes finalized for Motion Hearing (Civil) heard 02/19/2016 01:30:00 PM.	
46	02/22/2016	Order - Other (Proposed Order Expunging Notice of Pendency of Action (Lis Pendens) and Award of Legal Fees and Costs Against Plaintiff Pamela Bennett in the Sum of \$1,685.00) submitted by The Superior Court of San Diego rejected on 02/22/2016.	
47	03/10/2016	Notice of Ruling filed by Bank of America NA.	Deutsche Bank National Trust Company as Trustee for Holders of The GSR Mortgage Loan Trust 2007-OA1 (Defendant)
48	03/10/2016	Notice of Ruling (on plt pamel 2/19/16) filed by Bank of America NA.	Deutsche Bank National Trust Company as Trustee for Holders of The GSR Mortgage Loan Trust 2007-OA1 (Defendant)
49	03/10/2016	Notice of Ruling filed by Bank of America NA.	Deutsche Bank National Trust Company as Trustee for Holders of The GSR Mortgage Loan Trust 2007-OA1 (Defendant)
50	03/18/2016	Demurrer / Motion to Strike scheduled for 05/27/2016 at 01:30:00 PM at North County in N-27 Jacqueline M. Stern.	
51	03/18/2016	Demurrer / Motion to Strike scheduled for 05/27/2016 at 01:30:00 PM at North County in N-27 Jacqueline M. Stern.	
52	03/18/2016	Proof of Service of 10-day Summons & Complaint - Substitute filed by Bennett, Pamela. Refers to: Deutsche Bank National Trust Company as Trustee for Holders of The GSR Mortgage Loan Trust 2007-OA1	Bennett, Pamela (Plaintiff)
53	03/18/2016	Proof of Service filed by Bennett, Pamela; Bennett, James. Refers to: Deutsche Bank National Trust Company as Trustee for Holders of The GSR Mortgage Loan Trust 2007-OA1	Bennett, Pamela (Plaintiff); Bennett, James (Plaintiff)
54	03/22/2016	Request for Entry of Default (NOT ENTERED) filed by Bennett, James; Bennett, Pamela. Refers to: Deutsche Bank National Trust Company as Trustee for Holders of The GSR Mortgage Loan Trust 2007-OA1	Bennett, James (Plaintiff); Bennett, Pamela (Plaintiff)
55	03/22/2016	The default was denied as to Bank of America NA on Amended Complaint filed by Bennett, Pamela; Bennett, James .	

56	03/21/2016	Demurrer (5/27/16) filed by Bank of America NA.	Deutsche Bank National Trust Company as Trustee for Holders of The GSR Mortgage Loan Trust 2007-OA1 (Defendant)
57	03/21/2016	Motion to Strike (5/27/16) filed by Bank of America NA.	Deutsche Bank National Trust Company as Trustee for Holders of The GSR Mortgage Loan Trust 2007-OA1 (Defendant)
58	03/22/2016	Order (Court of Appeal order) filed by The Superior Court of San Diego.	
59	03/22/2016	Request for Entry of Default filed by Bennett, James; Bennett, Pamela. Refers to: Deutsche Bank National Trust Company as Trustee for Holders of The GSR Mortgage Loan Trust 2007-OA1	Bennett, James (Plaintiff); Bennett, Pamela (Plaintiff)
60	03/22/2016	The default was denied as to Bank of America NA on Amended Complaint filed by Bennett, Pamela; Bennett, James .	
61	04/08/2016	Declaration of Prejudice CCP 170.6 submitted by Bennett, James received but not filed on 04/08/2016.	Bennett, James (Plaintiff)
62	04/08/2016	Opposition to Noticed Motion and Supporting Declarations (4/22 MTN TO TRANSFER UNLAWFUL DETAINER ACTION TO UNLIMITED JURISDICTION AND TO CONSOLIDATE) filed by Bennett, James; Bennett, Pamela.	Bennett, James (Plaintiff); Bennett, Pamela (Plaintiff)
63	04/08/2016	Declaration of Prejudice CCP 170.6 (DENIED) filed by Bennett, James.	Bennett, James (Plaintiff)
64	04/13/2016	Declaration of Prejudice CCP 170.6 (DENIED) filed by Bennett, James.	Bennett, James (Plaintiff)
65	04/19/2016	Case Management Statement filed by Bank of America NA.	Deutsche Bank National Trust Company as Trustee for Holders of The GSR Mortgage Loan Trust 2007-OA1 (Defendant)
66	04/19/2016	Notice of Intent to Appear Telephonically filed by Bank of America NA.	Deutsche Bank National Trust Company as Trustee for Holders of The GSR Mortgage Loan Trust 2007-OA1 (Defendant)
67	04/21/2016	Tentative Ruling for Motion Hearing (Civil) published.	
68	04/21/2016	Case Management Statement filed by Bennett, Pamela; Bennett, James. Refers to: Deutsche Bank National Trust Company as Trustee for Holders of The GSR Mortgage Loan Trust 2007-OA1	Bennett, Pamela (Plaintiff); Bennett, James (Plaintiff)
69	04/22/2016	Minutes finalized for Motion Hearing (Civil) heard 04/22/2016 01:30:00 PM. (Subsequently amended - See ROA # 70)	
70	04/22/2016	Minutes finalized for Motion Hearing (Civil) heard 04/22/2016 01:30:00 PM. (As Amended)	
71	04/27/2016	Notice of Ruling filed by Bank of America NA. Refers to: Bennett, Pamela	Deutsche Bank National Trust Company as Trustee for Holders of The GSR Mortgage Loan Trust 2007-OA1 (Defendant)
72	05/02/2016	Notice of Intent to Appear Telephonically filed by Bank of America NA.	Deutsche Bank National Trust Company as Trustee for Holders of The GSR Mortgage Loan Trust 2007-OA1 (Defendant)
75	05/06/2016	Pursuant to California Rules of Court 3.714, the Court, after having met and conferred with counsel, categorizes this case as one that will be disposed of within 18 months	
76	05/06/2016	Trial Readiness Conference (Civil) scheduled for 01/06/2017 at 10:00AM before Judge Jacqueline M. Stern.	
77	05/06/2016	Civil Jury Trial scheduled for 01/20/2017 at 08:30AM before Judge Jacqueline M. Stern.	

78	05/06/2016	Jury demanded by plaintiffs.	
79	05/06/2016	Minutes finalized for Civil Case Management Conference heard 05/06/2016 09:00:00 AM.	
80	05/06/2016	Notice of Hearing SD generated.	
81	05/06/2016	Notice of Hearing SD generated.	
82	05/05/2016	Notice of Lien (on proceeds on judgment) filed by Bennett, Pamela.	Bennett, Pamela (Plaintiff)
83	05/16/2016	Opposition to Noticed Motion and Supporting Declarations (5/27 MTN TO STRIKE) filed by Bennett, James; Bennett, Pamela.	Bennett, James (Plaintiff); Bennett, Pamela (Plaintiff)
84	05/16/2016	Opposition to Noticed Motion and Supporting Declarations (5/27 DEMURRER AND PLTFs REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF PLTFs OPPO TO DEFTS DEMURRER) filed by Bennett, James; Bennett, Pamela.	Bennett, James (Plaintiff); Bennett, Pamela (Plaintiff)
85	05/20/2016	Request for Judicial Notice (5/27 SUPPLEMENTAL REQUEST) filed by Bank of America NA.	Deutsche Bank National Trust Company as Trustee for Holders of The GSR Mortgage Loan Trust 2007-OA1 (Defendant)
86	05/24/2016	Summary Judgment / Summary Adjudication (Civil) scheduled for 08/05/2016 at 01:30:00 PM at North County in N-27 Jacqueline M. Stern.	
87	05/24/2016	Motion Hearing (Civil) scheduled for 08/05/2016 at 01:30:00 PM at North County in N-27 Jacqueline M. Stern.	
88	05/23/2016	Notice of Intent to Appear Telephonically filed by Bank of America NA.	Deutsche Bank National Trust Company as Trustee for Holders of The GSR Mortgage Loan Trust 2007-OA1 (Defendant)
89	05/25/2016	Declaration - Other (5/27 APPLICATION TO STRIKE PORTIONS OF DEFTS DEMURRER) filed by Bennett, Pamela; Bennett, James.	Bennett, Pamela (Plaintiff); Bennett, James (Plaintiff)
90	05/26/2016	Tentative Ruling for Demurrer / Motion to Strike published.	
91	05/26/2016	Tentative Ruling for Demurrer / Motion to Strike published.	
94	05/27/2016	Demurrer / Motion to Strike continued pursuant to Court's motion to 08/12/2016 at 01:30PM before Judge Jacqueline M. Stern.	
95	05/27/2016	Minutes finalized for Demurrer / Motion to Strike heard 05/27/2016 01:30:00 PM.	
98	05/27/2016	Demurrer / Motion to Strike continued pursuant to Court's motion to 08/12/2016 at 01:30PM before Judge Jacqueline M. Stern.	
99	05/27/2016	Minutes finalized for Demurrer / Motion to Strike heard 05/27/2016 01:30:00 PM.	
100	06/10/2016	Ex Parte scheduled for 06/22/2016 at 08:30:00 AM at North County in N-27 Jacqueline M. Stern.	
101	06/06/2016	Notice - Other (Continued Motion set for 8/12/16) filed by Bank of America NA. Refers to: Bennett, Pamela; Bennett, James	Deutsche Bank National Trust Company as Trustee for Holders of The GSR Mortgage Loan Trust 2007-OA1 (Defendant)
102	06/06/2016	Notice - Other (Continued Demurrer set for 8/12/16) filed by Bank of America NA. Refers to: Bennett, Pamela; Bennett, James	Deutsche Bank National Trust Company as Trustee for Holders of The GSR Mortgage Loan Trust 2007-OA1 (Defendant)
103	06/17/2016	Ex Parte Application - Other and Supporting Documents (6/22/16- to Advance Hearing Date on Deft's Demurrer and Overrule) filed by Bennett, James; Bennett, Pamela. Refers to: Deutsche Bank National Trust Company as Trustee for Holders of The GSR Mortgage Loan Trust 2007-OA1	Bennett, James (Plaintiff); Bennett, Pamela (Plaintiff)

104	06/14/2016	Notice - Other (NOTICE OF NON-RECEIPT) filed by Bank of America NA.	Deutsche Bank National Trust Company as Trustee for Holders of The GSR Mortgage Loan Trust 2007-OA1 (Defendant)
105	06/22/2016	Minutes finalized for Ex Parte heard 06/22/2016 08:30:00 AM.	
106	06/22/2016	Request to Waive Court Fees filed by Bennett, James.	Bennett, James (Plaintiff)
107	06/23/2016	Order on Court Fee Waiver filed by Bennett, James.	Bennett, James (Plaintiff)
108	05/16/2016	Application - Other (5/27 APP TO STRIKE PORTIONS OF DEFTS DEMURRER) filed by Bennett, James; Bennett, Pamela.	Bennett, James (Plaintiff); Bennett, Pamela (Plaintiff)
109	05/16/2016	Request for Judicial Notice (5/27 NOTICE IN SUPPORT OF PLTFS OPPO TO DEFTS DEMURRER AND MTN TO STRIKE) filed by Bennett, James; Bennett, Pamela.	Bennett, James (Plaintiff); Bennett, Pamela (Plaintiff)
110	07/08/2016	Motion for Summary Judgment and/or Adjudication (8/5/16) filed by Bennett, Pamela; Bennett, James.	Bennett, Pamela (Plaintiff); Bennett, James (Plaintiff)
111	07/11/2016	Declaration - Other (5/27 RE: CCP 430.41(a) IN SUPPORT OF DEMUURER AND MOTION TO STRIKE) filed by Bank of America NA.	Deutsche Bank National Trust Company as Trustee for Holders of The GSR Mortgage Loan Trust 2007-OA1 (Defendant)
112	07/21/2016	Opposition to Noticed Motion and Supporting Declarations (8/5 SUMMARY JUDGMENT) filed by Bank of America NA.	Deutsche Bank National Trust Company as Trustee for Holders of The GSR Mortgage Loan Trust 2007-OA1 (Defendant)
113	07/21/2016	Statement - Other (8/5 SUMMARY JUDGMENT) filed by Bank of America NA.	Deutsche Bank National Trust Company as Trustee for Holders of The GSR Mortgage Loan Trust 2007-OA1 (Defendant)
114	07/21/2016	Request for Judicial Notice (8/5 SUMMARY JUDGMENT) filed by Bank of America NA.	Deutsche Bank National Trust Company as Trustee for Holders of The GSR Mortgage Loan Trust 2007-OA1 (Defendant)
115	07/28/2016	Notice of Intent to Appear Telephonically (8/5/16) filed by Bank of America NA.	Deutsche Bank National Trust Company as Trustee for Holders of The GSR Mortgage Loan Trust 2007-OA1 (Defendant)
116	07/29/2016	Reply to Opposition of Noticed Motion and Supporting Declarations (8/5 SUMMARY JUDGMENT) filed by Bennett, Pamela; Bennett, James.	Bennett, Pamela (Plaintiff); Bennett, James (Plaintiff)
117	07/29/2016	Order - Other (8/5 PROPOSED ORDER FOR PLTFS SUMMARY JUDGMENT) submitted by Bennett, James; Bennett, Pamela received but not filed on 07/29/2016.	Bennett, James (Plaintiff); Bennett, Pamela (Plaintiff)
118	07/29/2016	Objections (8/5 EVIDENTIARY OBJECTIONS) filed by Bennett, Pamela; Bennett, James.	Bennett, Pamela (Plaintiff); Bennett, James (Plaintiff)
119	07/29/2016	Order - Other (8/5 EVIDENTIARY OBJECTIONS) submitted by Bennett, James; Bennett, Pamela received but not filed on 07/29/2016.	Bennett, James (Plaintiff); Bennett, Pamela (Plaintiff)
120	07/29/2016	Opposition to Noticed Motion and Supporting Declarations (8/12 SUPPLEMENTAL OPPOSITION TO DEFTS DEMURRER) filed by Bennett, Pamela; Bennett, James.	Bennett, Pamela (Plaintiff); Bennett, James (Plaintiff)
121	07/29/2016	Affidavit - Other (8/12 SUPPORT OF PLTFS SUPPLEMENTAL OPPO TO DEMURRER) filed by Bennett, James; Bennett, Pamela.	Bennett, James (Plaintiff); Bennett, Pamela (Plaintiff)
122	08/04/2016	Tentative Ruling for Motion Hearing (Civil) published.	
123	08/04/2016	Tentative Ruling for Summary Judgment / Summary Adjudication (Civil) published.	
124	08/05/2016	Minutes finalized for Motion Hearing (Civil) heard 08/05/2016 01:30:00 PM.	
125	08/05/2016	Minutes finalized for Summary Judgment / Summary Adjudication (Civil) heard 08/05/2016 01:30:00 PM.	

126	08/08/2016	Declaration of Prejudice CCP 170.6 filed by Bennett, James.	Bennett, James (Plaintiff)
127	08/09/2016	Summary Judgment / Summary Adjudication (Civil) scheduled for 11/18/2016 at 01:30:00 PM at North County in N-27 Jacqueline M. Stern.	
128	08/11/2016	Tentative Ruling for Demurrer / Motion to Strike published.	
130	08/11/2016	Tentative Ruling for Demurrer / Motion to Strike published.	
131	08/12/2016	Minutes finalized for Demurrer / Motion to Strike heard 08/12/2016 01:30:00 PM.	
132	08/12/2016	Minutes finalized for Demurrer / Motion to Strike heard 08/12/2016 01:30:00 PM.	
133	08/19/2016	Motion Hearing (Civil) scheduled for 09/22/2016 at 01:30:00 PM at North County in N-27 Jacqueline M. Stern.	
134	08/22/2016	Motion for Reconsideration filed by Bennett, James; Bennett, Pamela.	Bennett, James (Plaintiff); Bennett, Pamela (Plaintiff)
135	08/25/2016	Answer (To First Amended Complaint) filed by Bank of America NA. Refers to: Bennett, Pamela; Bennett, James	Deutsche Bank National Trust Company as Trustee for Holders of The GSR Mortgage Loan Trust 2007-OA1 (Defendant)
136	08/30/2016	Motion Hearing (Civil) scheduled for 11/04/2016 at 01:30:00 PM at North County in N-27 Jacqueline M. Stern.	
137	08/30/2016	Motion for Summary Judgment and/or Adjudication filed by Bennett, James; Bennett, James.	Bennett, James (Plaintiff); Bennett, James (Plaintiff)
138	08/30/2016	Motion - Other (NOTICE TO ADD DOE DEFENDANTS ONE AND TWO) filed by Bennett, James; Bennett, Pamela.	Bennett, James (Plaintiff); Bennett, Pamela (Plaintiff)
139	08/30/2016	Opposition to Noticed Motion and Supporting Declarations (9/22 MTN FOR RECONSIDERATION OF THE COURTS 8/12 ORDER) filed by Bank of America NA.	Deutsche Bank National Trust Company as Trustee for Holders of The GSR Mortgage Loan Trust 2007-OA1 (Defendant)
140	09/01/2016	Demurrer / Motion to Strike scheduled for 11/04/2016 at 01:30:00 PM at North County in N-27 Jacqueline M. Stern.	
141	09/01/2016	Demurrer / Motion to Strike scheduled for 11/04/2016 at 01:30:00 PM at North County in N-27 Jacqueline M. Stern.	
142	08/19/2016	Notice of Ruling (on Motion for Summary Judgment) filed by Bank of America NA. Refers to: Bennett, Pamela; Bennett, James	Deutsche Bank National Trust Company as Trustee for Holders of The GSR Mortgage Loan Trust 2007-OA1 (Defendant)
144	09/06/2016	Motion to Strike (11/4/16) filed by Bennett, James; Bennett, Pamela.	Bennett, James (Plaintiff); Bennett, Pamela (Plaintiff)
145	09/06/2016	Demurrer (11/4/16) filed by Bennett, James; Bennett, Pamela.	Bennett, James (Plaintiff); Bennett, Pamela (Plaintiff)
146	09/06/2016	Request for Judicial Notice filed by Bennett, James; Bennett, Pamela.	Bennett, James (Plaintiff); Bennett, Pamela (Plaintiff)
147	09/15/2016	Reply to Opposition of Noticed Motion and Supporting Declarations (9/22 MTN FOR RECONSIDERATION) filed by Bennett, James; Bennett, Pamela.	Bennett, James (Plaintiff); Bennett, Pamela (Plaintiff)
148	09/15/2016	Request for Judicial Notice (9/22) filed by Bennett, James; Bennett, Pamela.	Bennett, James (Plaintiff); Bennett, Pamela (Plaintiff)
149	08/31/2016	Order (Court of Appeal order) filed by The Superior Court of San Diego.	
150	09/21/2016	Tentative Ruling for Motion Hearing (Civil) published.	
151	09/22/2016	Minutes finalized for Motion Hearing (Civil) heard 09/22/2016 01:30:00 PM.	
152	09/23/2016	Proof of Service by Mail (Plaintiff's Reply to Defendant's Opposition) filed by Bennett, Pamela; Bennett, James. Refers to: Deutsche Bank National Trust Company as Trustee for Holders of The GSR Mortgage Loan Trust 2007-OA1	Bennett, Pamela (Plaintiff); Bennett, James (Plaintiff)
153	09/26/2016	Notice of Ruling filed by Bennett, James; Bennett, Pamela.	Bennett, James (Plaintiff); Bennett, Pamela (Plaintiff)

154	10/03/2016	The Motion Hearing (Civil) was rescheduled to 11/18/2016 at 01:30:00 PM in N-27 before Jacqueline M. Stern at North County.	
155	10/03/2016	Motion Hearing (Civil) scheduled for 11/18/2016 at 01:30:00 PM at North County in N-27 Jacqueline M. Stern.	
156	10/11/2016	Notice - Other (NOTICE OF APPEAL) filed by Bennett, James; Bennett, Pamela.	Bennett, James (Plaintiff); Bennett, Pamela (Plaintiff)
157	10/13/2016	Order - Other (Court's Order Sustaining Defendant's Demurrer to Causes of Action One and Seven of the Plaintiffs' First Amended Complaint and Dismissal of Same) filed by Bennett, Pamela; Bennett, James. Refers to: Deutsche Bank National Trust Company as Trustee for Holders of The GSR Mortgage Loan Trust 2007-OA1	Bennett, Pamela (Plaintiff); Bennett, James (Plaintiff)
158	10/18/2016	Judgment submitted by Bennett, James; Bennett, Pamela rejected on 10/18/2016. Refers to: Deutsche Bank National Trust Company as Trustee for Holders of The GSR Mortgage Loan Trust 2007-OA1	Bennett, James (Plaintiff); Bennett, Pamela (Plaintiff)
159	10/20/2016	Substitution of Attorney filed by Bank of America NA.	Deutsche Bank National Trust Company as Trustee for Holders of The GSR Mortgage Loan Trust 2007-OA1 (Defendant)
160	10/21/2016	Motion - Other (11/18/16) filed by Bennett, James; Bennett, Pamela.	Bennett, James (Plaintiff); Bennett, Pamela (Plaintiff)
161	10/21/2016	Request for Judicial Notice (11/18/16) filed by Bennett, James; Bennett, Pamela.	Bennett, James (Plaintiff); Bennett, Pamela (Plaintiff)
162	10/25/2016	Amended Answer filed by Deutsche Bank National Trust Company as Trustee for Holders of The GSR Mortgage Loan Trust 2007-OA1.	Deutsche Bank National Trust Company as Trustee for Holders of The GSR Mortgage Loan Trust 2007-OA1 (Defendant)
163	10/25/2016	Original Summons (X-COMPLAINT) filed by Deutsche Bank National Trust Company as Trustee for Holders of The GSR Mortgage Loan Trust 2007-OA1.	Deutsche Bank National Trust Company as Trustee for Holders of The GSR Mortgage Loan Trust 2007-OA1 (Defendant)
164	10/25/2016	Cross-Complaint filed by Deutsche Bank National Trust Company as Trustee for Holders of The GSR Mortgage Loan Trust 2007-OA1. Refers to: Bennett, James; Bennett, Pamela	Deutsche Bank National Trust Company as Trustee for Holders of The GSR Mortgage Loan Trust 2007-OA1 (Defendant)
165	10/25/2016	Opposition - Other (11/4/16) filed by Deutsche Bank National Trust Company as Trustee for Holders of The GSR Mortgage Loan Trust 2007-OA1.	Deutsche Bank National Trust Company as Trustee for Holders of The GSR Mortgage Loan Trust 2007-OA1 (Defendant)
166	10/25/2016	Opposition - Other (11/4/16) filed by Deutsche Bank National Trust Company as Trustee for Holders of The GSR Mortgage Loan Trust 2007-OA1.	Deutsche Bank National Trust Company as Trustee for Holders of The GSR Mortgage Loan Trust 2007-OA1 (Defendant)
167	10/25/2016	Opposition - Other (11/4/16) filed by Deutsche Bank National Trust Company as Trustee for Holders of The GSR Mortgage Loan Trust 2007-OA1.	Deutsche Bank National Trust Company as Trustee for Holders of The GSR Mortgage Loan Trust 2007-OA1 (Defendant)

# **EXHIBIT 19**

(The Bennetts reported Defendant Change to the San Diego County Sheriffs)



James Bennett <359116james@gmail.com>

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test

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Mays, Matthew <Matthew.Mays@sdsheriff.org>  
To: James Bennett <359116james@gmail.com>

Wed, Aug 9, 2017 at 3:21 PM

Sir –

I spoke to several people including Clerk Garland, Judge Stern, and the supervisor in charge of the Civil Records division. The way this was explained to me was the Register of Actions (ROA) is simply a record of what is going on in a court case. It is not a factual document; meaning if the record incorrectly states party A won the case and in actuality party B won the case, it is what happened in the courtroom that is the fact. A dispute about what is on the ROA is a dispute about how the court keeps their records not a dispute of facts.

I was told when the ROA is updated in every case, all of the records are updated. For example, if my name was spelled Mayes on the record and then it was fixed to Mays, all of the Mayes referring to me would be changed to Mays - in all the documents not just the first. In this case, Bank of America and Deutsche Bank both had interest in the property and when a new attorney became part of the case, he updated the record from Bank of America to Deutsche Bank for whatever reason. In this case it states Bank of America for the Benefit of Deutsche Bank instead of just Bank of America.

I was told you had already filed an Ex Parte on this issue and it was denied by the Judge.

The two penal code sections you cited PC 132 and PC134 do not apply. These refer to offering documents as evidence or producing for fraudulent or deceitful purpose. The ROA is not evidence but a record of what is occurring in the case. These elements are not met. This is a civil matter and must be brought up to the court for relief. The District Attorney's Office is not the avenue for this issue.

C§ 132. Offering False Evidence

Every person who upon any trial, proceeding, inquiry, or investigation whatever, authorized or permitted by law, offers in evidence, as genuine or true, any book, paper, document, record, or other instrument in writing, knowing the same to have been forged or fraudulently altered or ante-dated, is guilty of felony.

C§ 134. Preparing False Documentary Evidence

Every person guilty of preparing any false or ante-dated book, paper, record, instrument in writing, or other matter or thing, with intent to produce it, or allow it to be produced for any fraudulent or deceitful purpose, as genuine or true, upon any trial, proceeding, or inquiry whatever, authorized by law, is guilty of felony.

I wish you well with your case. Sorry I could not be of more help.

Matthew Mays

Vista Patrol Station Detective Sergeant

**From:** James Bennett [mailto:[359116james@gmail.com](mailto:359116james@gmail.com)]

**Sent:** Wednesday, August 09, 2017 2:39 PM

[Quoted text hidden]

[Quoted text hidden]

# **EXHIBIT 20**

(Judge Freeland denied her own Section 170.6 Peremptory Challenge)



1 VISTA, CALIFORNIA; FRIDAY, MARCH 20, 2025; 1:30 P.M.

2 -000-

3 THE COURT: Bennett versus Bank of America. We  
4 have a court reporter in the courtroom. Do I have Pamela  
5 Bennett or James Bennett.

6 MR. BENNETT: James is here.

7 THE COURT: Good afternoon, sir. Do I have  
8 anyone on Microsoft Teams on Bennett versus Bank of  
9 America.

10 MR. BISSELL: Good afternoon, your Honor. Jared  
11 Bissell on behalf of defendant.

12 THE COURT: Anyone else on Microsoft Teams on  
13 this matter? All right, Counsel on Microsoft Teams make  
14 sure you speak slowly enough and loudly enough so that our  
15 court reporter can take you down. Mr. Bennett, have you  
16 seen the tentative ruling?

17 MR. BENNETT: Yes, I have.

18 THE COURT: And Counsel, have you seen the  
19 tentative ruling?

20 MR. BISSELL: Yes, we have. We would submit.

21 THE COURT: Mr. Bennett, would you like to be  
22 heard?

23 MR. BENNETT: Yes, I would, your Honor.

24 THE COURT: All right.

25 MR. BENNETT: I'm going to not take much of your  
26 time. It's just going to be a couple quick clarifications  
27 because the tentative is fairly straight forward.

28 THE COURT: Okay.

1 MR. BENNETT: The first thing is I just wanted to  
2 get an understanding. I see on -- this is register of  
3 action for October 19, 2006. I see a substitution of  
4 attorney.

5 THE COURT: 2006. This case was filed in 2015.

6 MR. BENNETT: Excuse me. 2015, my apologies.

7 THE COURT: No problem. Let me pull it up.  
8 You're looking at some in particular?

9 MR. BENNETT: I'm looking at October 19, 2016.

10 THE COURT: One moment. Let me get it.

11 MR. BENNETT: And that is.

12 THE COURT: October 16th?

13 MR. BENNETT: No. It's October 19th. Looks like  
14 it's number 158. No, it's 159. My apologies, it is  
15 October 20, 2016.

16 THE COURT: Let me get that.

17 MR. BENNETT: It's a substitute of attorney filed  
18 by Bank of America. I just need a little clarification on  
19 that. That was filed by Bank of America. From your  
20 tentative you're saying that they're to bank --

21 THE COURT: The substitution of counsel was filed  
22 Bank of America NA for the benefit of Deutsche Bank.

23 MR. BENNETT: Let's see what we show in here on  
24 mine. It says here -- see there is two. If you look down  
25 -- I can give you a copy of the register of action. They  
26 were switched within two hours. And I have copy here and  
27 I didn't know that defense counsel wasn't going to be  
28 here, so I'm not able to give him a copy so that he can

1 review it. I have two copies within two hours with this  
2 register action was switched from defendant being Bank of  
3 America to defendant being Deutsche Bank.

4 THE COURT: We only have one substitution of  
5 counsel on register of action 159. And it is on behalf of  
6 Bank of America NA for the benefit Deutsche Bank it was  
7 filed at 3:59 on October 20, 2016.

8 MR. BENNETT: See that was the clarification I  
9 needed. I have two register of actions. These register  
10 of actions were changed within less than two hours. And I  
11 have both of them right here. If you would like me to  
12 have the bailiff to hand you a copy, you can take a look.

13 THE COURT: I don't only because counsel can't  
14 see it. But I can tell you, Mr. Bennett, part of this  
15 issue is this has already been adjudicated several times.  
16 Regardless of what --

17 MR. BENNETT: No, I'm not -- I didn't mean to cut  
18 you off. We're not challenging that. What we're trying  
19 to do, like I said in the beginning, is to trying to get  
20 some clarification for further action.

21 THE COURT: Do you want me to print this that we  
22 have on the register of action?

23 MR. BENNETT: No. I have what I need. And I  
24 have it documented at the bottom. I don't require -- see  
25 because this register of action has been changed several  
26 times, okay. So I don't need the ones that were changed.  
27 I need the original one. So we can go back if you'd like  
28 to the very beginning when this case was filed. It was

1 filed July 22nd on 2015. And it tells you exactly who the  
2 defendant is. If you care to pull that out.

3 THE COURT: I can. But again, this issue has  
4 been adjudicated by this Court and the Appellate Court.

5 MR. BENNETT: That is not what -- I guess didn't  
6 make myself clear. I said I only had some clarification.  
7 I'm not challenging the tentative. I'm not challenging  
8 any of that. This is not the place for that. So what I'm  
9 asking is some clarification for my moves forward. That's  
10 it. I don't need anything else. The tentative I'm not  
11 challenging what you're saying in the tentative. I just  
12 need a little clarification.

13 THE COURT: What can I clarify for you?

14 MR. BENNETT: Just what I said.

15 THE COURT: What?

16 MR. BENNETT: The substitution of attorney, your  
17 Honor.

18 THE COURT: And that is what we have in our  
19 record.

20 MR. BENNETT: That's not accurate, okay. So  
21 we'll move forward. And you said that here on the  
22 tentative, you said the Court of Appeals long ago  
23 addressed -- and this is why I'm telling you I'm not  
24 challenging or this aspect of it. You said the Court of  
25 Appeal long ago addressed and resolved the issue of  
26 whether Deutsche Bank was the defendant. Okay, I'm not  
27 challenging that. Because that's not even clear. You  
28 said plaintiff already has appealed the decision and

1 supported -- I'm not challenging that, I have -- the  
2 judgment was affirmed. And I'm not challenging that  
3 because that's in my moving papers, I demonstrated that.

4 what I am challenging is the fact that we filed a  
5 complaint against Bank of America, and you changed the  
6 defendant because we had two judgments against Bank of  
7 America and we were cleaning the register copy. You  
8 changed the defendant from Bank of America to Deutsche  
9 Bank, which is not the defendant we sued. That's not the  
10 defendant we sued. All you have do is look the initial  
11 papers filed, okay, if you want clarification. And I'm  
12 just giving clarification. I'm not going to challenge  
13 what you're saying.

14 THE COURT: That's fine.

15 MR. BENNETT: But that's who we sued. And if  
16 you --

17 THE COURT: I'm looking at the complaint. The  
18 complaint is Pamela Bennett versus Bank of America NA for  
19 benefit --

20 MR. BENNETT: No. No. No. Reassignment to Judge  
21 Stern is what I'm speaking of. The initial papers from  
22 your court, the assignment to Judge Stern that says Pamela  
23 Bennett versus Bank of America NA. That's what I'm asking  
24 you to look at, the very first papers that -- I know it's  
25 on there. I know exactly what's on there. It says --

26 THE COURT: So I appreciate today what you're  
27 doing is just making your record. So you're welcome to do  
28 that. You can state whatever you like on the record for

1 purposes of this matter.

2 MR. BENNETT: well, I'm asking a question. It's  
3 civil case cover sheet, it says here case assignment. Now  
4 that would be number 6. You know, I don't like to allege  
5 fraud, but I can if I want to. Number 6 tells you exactly  
6 who we sued. And that's from your court.

7 THE COURT: I don't have --

8 MR. BENNETT: And it doesn't say Deutsche Bank --  
9 you don't access to number 6 of the registered document?

10 THE COURT: 6 appears as the case assignment.  
11 There is nothing attach to it.

12 MR. BENNETT: The case assignment tells you  
13 exactly the parties within the case assignment. So you  
14 just read down, it's like 4 pages.

15 THE COURT: I'm telling you I don't have access  
16 to it here. It lists, but I don't have access to it. The  
17 case assignment would not be a declaration of a definitive  
18 identification of all of the parties.

19 MR. BENNETT: It goes to one party.

20 THE COURT: I'm just telling you that doesn't  
21 define who the parties. There can be shorthands for the  
22 space limitations. But that doesn't define who the  
23 parties are.

24 MR. BENNETT: The plaintiff assigns the party.  
25 That's fairly simple.

26 THE COURT: Correct. And then the Court --

27 MR. BENNETT: And it's fairly simple it doesn't  
28 go into any extraordinary explanation. The plaintiff

1 takes the defendant, okay. If you allow the Court to pick  
2 the defendant, the Court might as well write the complete  
3 complaint. Does that make sense?

4 THE COURT: I understand you're making your  
5 record.

6 MR. BENNETT: No. No. I'm saying does that make  
7 sense?

8 THE COURT: There are circumstances where that  
9 doesn't work. This case has already been determined who  
10 the parties are.

11 MR. BENNETT: well, you keep going there. I keep  
12 tell you the clarification that -- I didn't waste my time  
13 to get here to get this clarification. I think you're at  
14 least obligated to tell me or give me some type of  
15 understanding of whether or not who gets to pick the  
16 defendant.

17 THE COURT: well, you filed against whoever you  
18 like. You get to pick who you sue. You're telling me  
19 that --

20 MR. BENNETT: Okay. But what you're telling me  
21 the tentative --

22 THE COURT: Mr. Bennett --

23 MR. BENNETT: -- you picked the defendant.

24 THE COURT: No. It was determination as to who  
25 you --

26 MR. BENNETT: No. You determined who the  
27 defendant was, right.

28 THE COURT: Mr. Bennett, I understand you're not

1 arguing with tentative. You can make your record. I'm  
2 just telling you, it's already been determined who the  
3 parties were.

4 MR. BENNETT: And who did that?

5 THE COURT: There was determination here. It was  
6 appealed. The Court of Appeal determination --

7 MR. BENNETT: who's here?

8 THE COURT: This Court.

9 MR. BENNETT: Judge Freeland, right? we don't  
10 have to talk about it. we don't have to do a masquerade.  
11 This Court is Judge Freeland; correct?

12 THE COURT: This is my department, that is  
13 correct. And it started with Judge Stern's department.

14 MR. BENNETT: No. The last motion --

15 THE COURT: I have no doubt of that, Mr. Bennett.

16 MR. BENNETT: Okay. But you said the same thing,  
17 that you determined the defendant.

18 THE COURT: The Court has ascertained who the  
19 real parties are. That's been determined several times.

20 MR. BENNETT: It wasn't -- it's not going put it  
21 in here. It's not that the way you said it the last time.

22 THE COURT: Anything else you'd like to put on  
23 the record?

24 MR. BENNETT: Yes, there is. And I filed for  
25 this very reason, I filed a preemptory challenge on you.

26 THE COURT: It was declined as untimely.

27 MR. BENNETT: And who declined it?

28 THE COURT: I did.

1 MR. BENNETT: Did you read the preemptory  
2 challenge?

3 THE COURT: I did.

4 MR. BENNETT: Did you realize you can't rule on  
5 your own preemptory challenge.

6 THE COURT: I can declare it untimely and that's  
7 what it was.

8 MR. BENNETT: You can't do that. But we'll leave  
9 that for another day.

10 THE COURT: Okay.

11 MR. BENNETT: Let's see because this is as  
12 contentious -- I thought it was just clarification. This  
13 is contentious as the last one. And we have 15 pages of  
14 transcripts of the last one, the last time we did this.  
15 And you have not modified or learned anything from that.  
16 You know, I'm going to come in here and I'm going to ask  
17 you these questions. But you have not adjusted your  
18 attitude. That's okay.

19 THE COURT: Anything else you like to add?

20 MR. BENNETT: No, I think that should be enough.

21 THE COURT: All right.

22 MR. BENNETT: The only other thing I'd like to  
23 say is, can I get a card from the court reporter, please.  
24 Is it on the minute order?

25 THE COURT: Yes.

26 MR. BENNETT: Okay. That should be sufficient.

27 THE COURT: So we will confirm the tentative as  
28 an order of the court. A minute order will serve as the

1 order. We will send out notice. And you have nice  
2 weekend.

3 MR. BENNETT: I appreciate it. Thank you.

4 (END OF PROCEEDINGS.)

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1 STATE OF CALIFORNIA)

2 :

3 COUNTY OF SAN DIEGO)

4

5 I, STACEY ALCORN, Official Reporter for the Superior  
6 Court of the State of California, in and for the County of  
7 San Diego, do hereby certify:

8 That as such Official Reporter, I reported in machine  
9 shorthand the proceedings held in the foregoing case;

10 That my notes were transcribed into typewriting under  
11 my direction and the proceedings held on March 20, 2026,  
12 contained within pages 1 through 12, are a true and  
13 correct transcription.

14 Dated March 25, 2026.

15

16

17



18

STACEY ALCORN, CSR  
CSR No. 13303

19

OFFICIAL COURT REPORTER

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# **EXHIBIT 21**

(Prior Commission Failures)