

1 DOUGLAS GILLIES
2 3756 Torino Drive
3 Santa Barbara, CA 93105
4 (805) 682-7033
5 douglasgillies@gmail.com
6 *in pro per*

7
8 **SUPERIOR COURT, STATE OF CALIFORNIA**
9 **COUNTY OF SANTA BARBARA**

10
11 DOUGLAS GILLIES,
12 Plaintiff,
13 v.
14 CALIFORNIA RECONVEYANCE CO.,
15 and DOES 1-50
16 Defendants.

) Case No. 1381828

) **Complaint for Declaratory**
) **Relief, Fraudulent Transfer,**
) **Violation of Civ Code §2923.5,**
) **to Enjoin Illegal Foreclosure,**
) **and for Damages**

17
18
19 Plaintiff alleges:

20 **INTRODUCTION**

- 21 1. Plaintiff DOUGLAS GILLIES is a resident of Santa Barbara, California.
22 2. Defendant CALIFORNIA RECONVEYANCE COMPANY (“CRC”) is a
23 California corporation.
24 3. Defendants Does 1-50, inclusive, are sued under fictitious names. When
25 their true names and capacities are known, Plaintiff will amend this Complaint
26 and insert them. Plaintiff is informed and believes and thereon alleges that each
27 of these fictitiously named defendants is legally responsible, negligently or in
28 some other actionable manner, for the events and happenings hereinafter

1 referred to and proximately caused the injuries and damages to plaintiff as
2 hereinafter alleged, or claims some right, title, estate, lien, or interest in the
3 residence adverse to Plaintiff's title and their claims constitute a cloud on
4 Plaintiff's title to the property, or participated in unlawful or fraudulent acts that
5 resulted in injury to Plaintiff's person or property.

6 4. Plaintiff brings this action against CRC and Does 1 through 50 for
7 attempting to sell Plaintiff's Property at a trustee's sale and deprive Plaintiff of his
8 residence without a lawful claim to the Property. Plaintiff seeks to clear his title of
9 defendants' adverse claims.

10 5. Plaintiff DOUGLAS GILLIES is the rightful owner of a single-family
11 residence at 3756 Torino Drive, Santa Barbara, California, APN 049-111-04-00
12 ("the Property"). He and his wife acquired the Property pursuant to a Grant Deed
13 recorded on April 30, 1992, attached as Exhibit "A". The legal description of the
14 Property is:

15 Lot 70 of Hidden Valley, in the City of Santa Barbara, County of Santa Barbara,
16 State of California, as per map recorded in Book 52, Pages 26 to 32, inclusive of
17 maps, in the office of the County Recorder of said County.

18 6. Plaintiff's wife conveyed her interest in the Property to Plaintiff by
19 Interspousal Transfer Deed on July 16, 1997.

20 7. On August 13, 2009, defendant CRC recorded a Notice of Default
21 ("NOD") alleging a breach of the obligation secured by a Deed of Trust for the
22 Property. A copy of the NOD is attached as Exhibit "B". A search of the Santa
23 Barbara County Grantor/Grantee Index under Plaintiff's name, Douglas Gillies,
24 does not turn up any reference to the NOD.

25 8. On June 30, 2011, CRC recorded a Notice of Trustee's Sale (NOTS) that
26 includes a legal description of part of the Property described in the Grant Deed.
27 The NOTS describes CRC as "the duly appointed Trustee under and pursuant to
28 Deed of Trust Recorded 08-27-2003, Book , Page , Instrument 2003-0116698 of

1 official records in the office of the recorder of SANTA BARBARA County,
2 California, executed by: DOUGLES GILLIES, AN UNMARRIED MAN, as
3 Trustor, WASHINGTON MUTUAL BANK, FA, as Beneficiary." A copy of the
4 NOTS is attached as Exhibit "C".

5 9. CRC's statement in the NOTS that a Deed of Trust was executed by
6 Douglas Gillies is false.

7 10. A Google search of the phrase "Douglas Gillies" reveals that Douglas
8 Gillies is a fictitious name. No human being, business entity, or trademark in the
9 Google universe bears the name *Douglas Gillies*. By comparison, any number of
10 people are named Douglas Gillies but only one of them, Plaintiff, is named as
11 Grantee on the Grant Deed (Exhibit A) to the Property.

12 11. No Deed of Trust recorded 08-27-2003 is listed in the Santa Barbara
13 Grantor/Grantee Index under "Douglas Gillies." No Deed of Trust indexed under
14 "Douglas Gillies" identifies CRC as a Trustee of the Property or Washington
15 Mutual Bank, FA ("WaMu") as a Beneficiary. No Notice of Default and no Notice
16 of Trustee's Sale are listed in the Santa Barbara Grantor/Grantee Index under
17 "Douglas Gillies."

18 12. The NOTS states that CRC, as Trustee, will sell the Property at public
19 auction sale on 7-25-2011 at 1:00 PM at the Santa Barbara County Courthouse.
20

21 **FIRST CAUSE OF ACTION – DECLARATORY RELIEF**

22 13. Plaintiff refers to and incorporates Paragraphs 1-12.

23 14. California Civil Code §2924f (b)(1) states, "before any sale of property
24 can be made under the power of sale contained in any deed of trust or
25 mortgage...notice of the sale thereof shall be given by posting a written
26 notice...describing the property to be sold, at least 20 days before the date of
27 sale...and publishing a copy once a week for three consecutive calendar weeks,
28

1 the first publication to be at least 20 days before the date of sale...The notice of
2 sale shall contain...the name of the original trustor".

3 15. On July 6, 2011, Plaintiff searched his name, Douglas Gillies, in the
4 Grantor/Grantee Index of the Santa Barbara County Recorders' Office¹ for the
5 period between April 30, 1992, when Plaintiff acquired the Property, and July 5,
6 2011.

7 16. There is no reference under Plaintiff's name in the Grantor/Grantee
8 Index of the Santa Barbara County Recorders' Office to the "Deed of Trust
9 Recorded 08-27-2003" which CRC describes in the NOTS. There is also no
10 reference in the Grantor/Grantee Index to the NOTS that CRC recorded on June
11 30, 2011.

12 17. The only reference to Washington Mutual Bank in the Grantor/Grantee
13 index under Douglas Gillies is a Deed of Trust dated 2/14/2002, Record # 2002-
14 0014892. The Grantor/Grantee index indicates that that Deed of Trust was
15 reconveyed to Plaintiff on 9/30/2003, Record # 2003-0133943.

16 18. The only index maintained by the Santa Barbara Recorder for the
17 purpose of searching title to real property is the Grantor/Grantee Index, and if
18 the name of a property owner is not spelled correctly in a recorded document,
19 that document will not turn up in a title search.

20 19. An actual controversy has arisen and now exists between Plaintiff and
21 Defendants concerning their respective rights and duties. Plaintiff contends that
22 Defendants are not authorized to publish, post, serve, or record a Notice of
23 Trustee's Sale and are not entitled to sell the Property on the grounds that CRC is
24 not a Trustee, Washington Mutual is not a Beneficiary of Record, and no Notice
25 of Trustee's Sale has been recorded stating the name of the owner of the Property,
26
27

28

¹ <http://www.sbcvote.com/clerkrecorder/GrantorGranteeIndex.aspx>

1 whereas CRC asserts that it will sell the residence at the Santa Barbara
2 Courthouse on July 25, 2011, at 1:00 PM.

3 20. Plaintiff respectfully requests an order that the Deed of Trust through
4 which the Defendants claim title to and/or the right to sell the Property at 3756
5 Torino Drive, and the attached NOD and NOTS be declared invalid and void.
6

7 **SECOND CAUSE OF ACTION – FRAUDULENT TRANSFER**

8 21. Plaintiff refers to and incorporates Paragraphs 1-20.

9 22. On or about March 9, 2010, Plaintiff informed CRC that the NOD it
10 recorded August 13, 2009, did not correctly state the name of the trustor, that it
11 incorrectly stated the name of the trustor to be *Douglas Gillies*, a fictitious
12 person, that a search of the Santa Barbara Official Records for Douglas Gillies did
13 not turn up any NOD recorded by CRC, and that the NOD did not comply with
14 Cal. Civil Code §2924 because a notice of default must be recorded prior to a
15 nonjudicial sale stating the name of the trustor.

16 23. Knowing that the name on the NOD, *Douglas Gillies*, is fictitious, CRC
17 recorded a NOTS on June 30, 2011 stating that name, delivered a copy to Plaintiff
18 announcing its intention to conduct a Trustee's Sale on July 25, 2011, and
19 published the NOTS in a newspaper of general circulation falsely representing
20 that CRC is the duly appointed Trustee pursuant to Deed of Trust Recorded 08-
21 27-2003 executed by "DOUGLES GILLIES AN UNMARRIED MAN, as Trustor".

22 24. For many years, CRC has been in the business of conducting trustee's
23 sales in California, and therefore CRC knew or should have known that a DOT,
24 NOD, or NOTS recorded under a fictitious name cannot be located in a title
25 search of the Property in the Santa Barbara Grantor/Grantee Index.

26 25. If not restrained by the Court, CRC may attempt to fraudulently sell
27 defective title to the Property to an unsuspecting buyer at a trustee's sale at the
28 Santa Barbara courthouse, and as a result will intentionally place a cloud on the

1 title to Plaintiff's Property that will require a succession of lawsuits and impose
2 on Plaintiff the financial burden of tendering a sum of several hundred thousand
3 dollars and hiring attorneys to quiet title to his Property against any "bona fide"
4 purchaser who relies upon CRC's misrepresentations.

5
6 **THIRD CAUSE OF ACTION – VIOLATION OF CIV. CODE §2923.5**

7 26. Plaintiff refers to and incorporates Paragraphs 1 - 25.

8 27. The Notice of Default (Exhibit B) does not name the beneficiary or an
9 authorized agent. It simply states, "To find out the amount you must pay, to
10 arrange for payment to stop the foreclosure, or if the property is in foreclosure for
11 any other reason, contact: JPMorgan Chase Bank, National Association at 7301
12 Baymeadows Way, Jacksonville, FL 32256." JPMorgan Chase Bank's capacity is
13 not described in the Notice of Default.

14 28. California Civil Code §2923.5 states that a Notice of Default may not be
15 filed until 30 days after a mortgagee, a beneficiary, or an authorized agent has
16 contacted the borrower, accessed the borrower's financial situation, and explored
17 options to avoid foreclosure. The Notice of Default must include a declaration
18 from one of those three entities showing that it has contacted the borrower or
19 tried with due diligence to contact the borrower.

20 29. The Notice of Default (Ex. B) does not include a declaration under oath
21 from a mortgagee, beneficiary, or authorized agent stating that the contacts
22 required by §2923.5 have taken place exploring options to avoid foreclosure.
23 Rather, the Notice of Default states, "The beneficiary or its designated agent
24 declares that it has contacted the borrower...." This ambiguous assertion does not
25 have any evidentiary value to indicate who contacted the borrower or whether
26 options were explored.

27 30. Defendants did not contact Plaintiff, either in person or by telephone,
28 to discuss Plaintiff's financial condition and the impending foreclosure.

1 Defendants did not call, it did not write, and it did not provide a toll-free HUD
2 number to Plaintiff. Defendants did not offer to meet with Plaintiff and did not
3 advise him that he had a right to request a subsequent meeting within 14 days.

4 31. California Civil Code §2923.5(g) states that a notice of default may be
5 filed pursuant to §2924 when a mortgagee, beneficiary, or authorized agent has
6 not contacted a borrower provided that the failure to contact the borrower
7 occurred despite the due diligence of the mortgagee, beneficiary, or authorized
8 agent. Due diligence is defined in §2923.5(g) as:

9 (1) A mortgagee, beneficiary, or authorized agent shall first attempt to
10 contact a borrower by sending a first-class letter that includes the toll-free
11 telephone number made available by HUD to find a HUD-certified housing
12 counseling agency.

13 (2) (A) After the letter has been sent, the mortgagee, beneficiary, or
14 authorized agent shall attempt to contact the borrower by telephone at
15 least three times at different hours and on different days. Telephone calls
16 shall be made to the primary telephone number on file.

17 (B) A mortgagee, beneficiary, or authorized agent may attempt to contact
18 a borrower using an automated system to dial borrowers, provided that, if
19 the telephone call is answered, the call is connected to a live representative
20 of the mortgagee, beneficiary, or authorized agent.

21 (C) A mortgagee, beneficiary, or authorized agent satisfies the telephone
22 contact requirements of this paragraph if it determines, after attempting
23 contact pursuant to this paragraph, that the borrower's primary telephone
24 number and secondary telephone number or numbers on file, if any, have
25 been disconnected.

26 (3) If the borrower does not respond within two weeks after the telephone
27 call requirements of paragraph (2) have been satisfied, the mortgagee,
28 beneficiary, or authorized agent shall then send a certified letter, with
return receipt requested.

(4) The mortgagee, beneficiary, or authorized agent shall provide a means
for the borrower to contact it in a timely manner, including a toll-free
telephone number that will provide access to a live representative during
business hours.

(5) The mortgagee, beneficiary, or authorized agent has posted a
prominent link on the homepage of its Internet Web site, if any, to the
following information:

1 (A) Options that may be available to borrowers who are unable to afford
2 their mortgage payments and who wish to avoid foreclosure, and
3 instructions to borrowers advising them on steps to take to explore those
4 options.

5 (B) A list of financial documents borrowers should collect and be
6 prepared to present to the mortgagee, beneficiary, or authorized agent
7 when discussing options for avoiding foreclosure.

8 (C) A toll-free telephone number for borrowers who wish to discuss
9 options for avoiding foreclosure with their mortgagee, beneficiary, or
10 authorized agent.

11 (D) The toll-free telephone number made available by HUD to find a
12 HUD-certified housing counseling agency.

13 32. Defendants did none of the above. The Notice of Default identifies CRC
14 as "duly appointed Trustee under a Deed of Trust dated 08/12/2003, executed by
15 DOUGLES GILLIES, AN UNMARRIED MAN, as trustor to secure obligations in
16 favor of WASHINGTON MUTUAL BANK, FA, as Beneficiary Recorded
17 8/27/2003, Book , Page , ". It directs the recipient to contact JPMorgan Chase
18 Bank, National Association, in Jacksonville, FL to stop the foreclosure.

19 33. The final paragraph of the NOD states, "The beneficiary or its
20 designated agent declares that it has contacted the borrower, tried with due
21 diligence to contact the borrower as required by California Civil Code 2923.5, or
22 the borrower has surrendered the property to the beneficiary or authorized agent,
23 or is otherwise exempt from the requirements of §2923.5. It is signed by Stacy
24 White, Assistant Secretary.

25 34. Stacy White either misrepresented the facts, if and when she signed
26 the NOD, or she did not have personal knowledge of the matters described in her
27 statement when she asserted that "the beneficiary or its designated agent" tried to
28 contact Plaintiff as required by §2923.5.

35. Since the contacts required by §2923.5 did not occur, the foreclosure is
illegal.

1 36. An actual controversy has arisen and now exists between plaintiff and
2 defendants concerning their respective rights and duties. Plaintiff contends that
3 defendants are not entitled to sell the residence because no beneficiary or
4 authorized agent complied with the requirements of Civil Code §2923.5 to contact
5 the borrower to explore options to foreclosure, whereas defendants assert that
6 they will sell the residence on July 25, 2011.

7
8 **FOURTH CAUSE OF ACTION – INJUNCTION**

9 37. Plaintiff refers to and incorporates Paragraphs 1-36.

10 38. Unless restrained, defendants will sell plaintiff's residence, or cause it
11 to be sold, to plaintiff's great and irreparable injury, for which pecuniary
12 compensation would not afford adequate relief.

13 39. Defendants' wrongful conduct, unless and until restrained by order of
14 this court, will cause great irreparable injury to plaintiff as the value of the
15 residence declines under threat of foreclosure and plaintiff faces the prospect of
16 eviction from his residence.

17 40. Plaintiff has no adequate remedy at law for the injuries currently being
18 suffered and that are threatened. It will be impossible for plaintiff to determine
19 the precise amount of damage that he will suffer if defendants' conduct is not
20 restrained and plaintiff is forced to institute a multiplicity of suits to remain in
21 possession, quiet title, and obtain compensation for his injuries.

22 41. As a proximate result of defendants' wrongful conduct, plaintiff has
23 been damaged in excess of \$100,000.00 due to a decline in the value of the
24 Property. Plaintiff will be further damaged so long as defendants' efforts to
25 conduct an unauthorized sale continue. The full amount of this damage is not
26 now known to plaintiff, and plaintiff will amend this complaint to state the
27 amount when it becomes known.

1 WHEREFORE, plaintiff prays judgment against defendants as follows:

2 1. For a declaration that the Deed of Trust through which the Defendants claim
3 title to and/or the right to sell the Property at 3756 Torino Drive, the attached
4 NOD (Exhibit B), and attached NOTS (Exhibit C) be declared invalid and void.

5 2. For a temporary restraining order, a preliminary injunction, and a permanent
6 injunction, enjoining defendants, and all persons acting under, for, or in concert
7 with defendants from selling the residence or attempting to sell it or causing it to
8 be sold, either under power of sale pursuant to the trust deed or by foreclosure
9 action, and from posting, publishing, or recording a notice of default or notice of
10 trustee's sale contrary to state or federal law;

11 3. For an order requiring defendants to show cause why they should not be
12 enjoined from selling the residence during the pendency of this action;

13 4. For damages in the sum of \$100,000.00, plus damages in such further sums
14 as may be sustained and ascertained before final judgment;

15 5. For reasonable attorney's fees and costs of suit incurred; and

16 6. For other relief as the court deems proper.

17 July 13, 2011

18 Douglas Gillies, Plaintiff

19
20 VERIFICATION

21 I, Douglas Gillies, am the plaintiff in the above-entitled action. I have read the
22 foregoing complaint and know its contents. The same is true of my own
23 knowledge, except as to those matters that are alleged on information and belief,
24 and as to those matters, I believe them to be true. I declare under penalty of
25 perjury under the laws of the State of California that the foregoing is true and
26 correct.

27
28 July 13, 2011

1 DOUGLAS GILLIES
2 3756 Torino Drive
3 Santa Barbara, CA 93105
4 (805) 682-7033
5 *in pro per*

6
7
8 **SUPERIOR COURT, STATE OF CALIFORNIA**
9 **COUNTY OF SANTA BARBARA**
10

11 DOUGLAS GILLIES,
12 Plaintiff,
13 v.
14 CALIFORNIA RECONVEYANCE CO.
15 and DOES 1-50
16 Defendants.
17

Case No. 1381828
**Ex Parte Application for
Temporary Restraining Order
and Order to Show Cause re:
Preliminary Injunction;
Memo of Points & Authorities;
Declaration of Douglas Gillies;
Certification of Notice**

**Date: July 20, 2011
Time: 8:45
Dept. 6
Hon. Denise deBellefeuille**

18
19
20
21 Plaintiff DOUGLAS GILLIES requests a temporary restraining order to
22 restrain defendant CALIFORNIA RECONVEYANCE CO. ("CRC") from
23 proceeding with a Trustee's Sale, scheduled for July 25, 2011, of the residence
24 located at 3756 Torino Drive, Santa Barbara, CA, APN 049-111-04-00
25 ("Property"), and for an order to show cause why a preliminary injunction should
26 not be granted enjoining defendant and its agents from selling the residence
27 during the pendency of this action.

28 This application is made on the grounds stated in the Verified Complaint,

1 the declaration of Douglas Gillies, and Plaintiff's Memorandum of Points &
2 Authorities, and on the grounds that irreparable injury will result to plaintiff
3 before the matter can be heard on notice because the sale is set for next Monday.

4 Plaintiff made a previous application for a TRO to stop a foreclosure sale of
5 the Property in *Gillies v. California Reconveyance Co., JPMorgan Chase Bank,*
6 *et al.*, Case No. 1340786. The TRO was denied by Hon. Thomas P. Anderle on
7 December 2, 2009. In that case, Plaintiff alleged that no Notice of Default had
8 been recorded. Defendants' demurrer was sustained and the case was dismissed
9 without leave to amend. Upon further examination, the true defect in title was
10 discovered. In the instant case, Plaintiff alleges the additional facts that the Deed
11 of Trust, Notice of Default, and Notice of Trustee's Sale – all recorded by CRC
12 and cited in support of its notice to sell the Property on July 25, 2011 - do not
13 state the name of the trustor. As a result, the chain of title under which CRC
14 claims a right to sell the Property does not include the Grant Deed by which
15 Plaintiff acquired title to the Property or any other recorded documents relating
16 to the Property in the Santa Barbara County Recorder's Grantor/Grantee Index.
17 This is described in the attached exhibits. A trustee's sale would be a sham.

18 CRC has been represented in numerous lawsuits in California by the law
19 firm of AlvaradoSmith, 633 W. Fifth Street, Suite 1100, Los Angeles, CA 90071,
20 (213) 629-7038. On July 15, 2011, Michael Tannatt, Esq. informed Plaintiff that
21 AlvaradoSmith is not authorized to accept service of the Complaint in this matter.

22 On July 15, 2011, Plaintiff served the Complaint on CRC's registered agent
23 for service of process: CT Corporation.

24
25 Dated: July 18, 2011

26 _____
27 Douglas Gillies, Plaintiff
28

1 MEMORANDUM OF POINTS AND AUTHORITIES

2
3 The power of sale shall not be exercised until a notice of default is recorded
4 in the office of the county recorder, which shall include "a statement identifying
5 the mortgage or deed of trust by stating the name or names of the trustor." Cal.
6 Civ. Code § 2924 (a) (1) (A).

7 The notice of sale shall be recorded in the office of the county recorder at
8 least 20 days prior to the date of sale and the notice of sale shall contain the name
9 of the original trustor. Cal. Civ. Code § 2924f (b)(1).

10 If the name is misspelled on a notice of default and notice of trustee's sale,
11 the records cannot be properly indexed. In *Cady v. Purser* (1901), 131 Cal. 552, a
12 mortgage on property had been recorded, but had been improperly indexed in the
13 book covering "Bills of Sale and Agreements" rather than in the mortgage book.
14 The court noted that the statutory scheme for recording contemplated that
15 indexes were to be kept, the purpose of which was to allow subsequent
16 purchasers to locate liens against the property by searching the proper indexes.
17 Because the purpose of proper indexing was to allow the document to be located,
18 the failure to properly index a document rendered it unlocatable, and hence the
19 document had to be treated as though never having been recorded. (131 Cal. at
20 555-558; see also *Rice v. Taylor* (1934) 220 Cal. 629, 633-634, 32 P.2d 381
21 (purchaser searching the appropriate index would not have located the recorded
22 document because it was improperly indexed; court held the purchaser was not
23 charged with constructive notice even though the document had been recorded).

24 "Although the statutory rules governing the mechanics of recording and
25 indexing documents have changed since the decisions in *Cady* and *Rice*, our
26 review of the current statutory scheme convinces us that proper indexing remains
27 an essential precondition to constructive notice. The statutes governing recording
28 (Gov. Code, § 27201 et seq.) still require that indexes be kept and abstracts of

1 judgments be indexed in a column listing "judgment debtors" (Gov. Code, §
2 27248), or "grantors" where a general index system is used (Gov. Code, § 27257)."
3 *Hochstein v. Romero* (1990), 219 Cal.App.3d 447, 453, 268 Cal.Rptr. 202.

4 The attached Exhibits 4 and 5 demonstrate how improper indexing negates
5 this essential precondition to constructive notice.

6 Plaintiff has filed a Notice of Related Case referring to *Gillies v. California*
7 *Reconveyance Company, et. al.*, Case no. 1340786, filed on November 25, 2009,
8 where Plaintiff alleged that no notice of default had been recorded. Since the
9 Trustor's name was not stated correctly on the NOD, it could not be located in the
10 Grantor/Grantee index. After defendants filed a Demurrer and a Request for
11 Judicial Notice with a recorded notice of default attached, plaintiff discovered
12 that the NOD and the NOTS stated the name of the trustor as Douglas Gillies, a
13 fictitious person. Since the notice of default and notice of trustee's sale did not
14 comply with Civ. Code §2924, Plaintiff argued that a trustee's sale was not
15 authorized under California law.

16 Plaintiff raised this issue in his Opposition to Demurrer and requested
17 leave to amend his Complaint to accurately state the defect in the NOD and the
18 NOTS. The demurrer was sustained without leave to amend and without
19 comment by the court about the name. Plaintiff has now discovered that the Deed
20 of Trust under which CRC asserts its right of sale also describes the trustor on the
21 first page as Douglas Gillies. The attached exhibits show that the Deed of Trust,
22 NOD, and NOTS recorded by CRC bear no relationship to the chain of title of the
23 Property in the Santa Barbara Grantor/Grantee Index.

24 In California, res judicata applies when (1) the decision in the prior
25 proceeding is final and on the merits, (2) the present proceeding is on the same
26 cause of action as the prior proceeding, and (3) the parties in the present
27 proceeding or parties in privity with them were parties to the prior proceeding.
28 *Planning and Conservation League v. Castaic Lake Water Agency*, 103 Cal.

1 Rptr. 3d 124, 139 (Cal. Ct. App. 2009). “A judgment is on the merits for purposes
2 of res judicata if the substance of the claim is tried and determined.” *Johnson v.*
3 *City of Loma Linda*, 5 P.3d 874, 884 (Cal. 2000). In particular, a judgment is on
4 the merits if the substance of a claim was tried and determined by way of
5 summary judgment. *Burdette v. Carrier Corp.*, 71 Cal. Rptr. 3d 185, 196 (Cal. Ct.
6 App. 2008).

7 If, on the other hand, a demurrer is sustained, the case is dismissed, and
8 then new or additional facts are alleged that cure the defects in the original
9 pleading, it is settled that the former judgment is not a bar to the subsequent
10 action whether or not plaintiff had an opportunity to amend his complaint.
11 *Keidatz v. Albany*, 39 Cal. 2d. 826, (1952).

12 13 14 DECLARATION OF DOUGLAS GILLIES

15
16 DOUGLAS GILLIES declares:

- 17 1. I am the plaintiff in the above-described action.
- 18 2. On June 30, 2011, defendant California Reconveyance Co. ("CRC")
19 recorded a Notice of Trustee's Sale announcing its intention to sell Plaintiff's
20 property on July 25, 2011, at the Santa Barbara County courthouse.
- 21 3. Plaintiff's interest in the Property is based on a Grant Deed (**Exhibit 1**).
- 22 4. The pending sale is based on a Notice of Default ("NOD") attached as
23 **Exhibit 2**, and a Notice of Trustee's Sale ("NOTS") attached as **Exhibit 3**, that
24 do not accurately state the name of the trustor and owner of the Property. CRC
25 asserts that it is a Trustee on the basis of a Deed of Trust that is not indexed in
26 the Grantor/Grantee Index under Plaintiff's name as grantee and trustor.
- 27 5. The NOTS (Exhibit 3) describes CRC as "the duly appointed Trustee
28 under and pursuant to Deed of Trust Recorded 08-27-2003, Book , Page ,

1 Instrument 2003-0116698 of official records in the office of the recorder of
2 SANTA BARBARA County, California, executed by: DOUGLES GILLIES, AN
3 UNMARRIED MAN, as Trustor, WASHINGTON MUTUAL BANK, FA, as
4 Beneficiary." Plaintiff's name, as stated in the Grant Deed, is not Douglas Gillies.

5 6. Attached hereto as **Exhibit 4** is a true copy of the result of a search of
6 the Santa Barbara Grantor/Grantee Index under "Douglas Gillies." There is no
7 current Deed of Trust, Notice of Default, or Notice of Trustee's Sale listed in the
8 Grantor/Grantee Index that names Douglas Gillies as a trustor or grantee and
9 names CRC as a Trustee or Washington Mutual Bank ("WaMu") as a Beneficiary.

10 7. The only reference to WaMu in the Grantor/Grantee index under
11 "Douglas Gillies" in Exhibit 4 is a Deed of Trust dated 2/14/2002, Record #
12 2002-0014892. The Grantor/Grantee index shows that that Deed of Trust was
13 reconveyed to Plaintiff on 9/30/2003, Record # 2003-0133943.

14 8. Defendant's NOD, NOTS, and Deed of Trust are indexed in the
15 Grantor/Grantor Index under the name "Douglas Gillies" - where no other
16 documents are filed. They are not linked to the chain of title to Plaintiff's
17 Property. Attached hereto as **Exhibit 5** is the result of a search the Santa Barbara
18 Grantor/Grantee Index under the name "Douglas Gillies." It lists only a Deed of
19 Trust, NOD, and NOTS. There is no document indicating how title was acquired.

20 9. The only index maintained by the Santa Barbara Recorder's Office for
21 searching title to real property is the Grantor/Grantee Index. A clerk in the Santa
22 Barbara Recorder's Office stated on July 7, 2011, "If the name of a property owner
23 is not spelled correctly, the document will not turn up in a title search."

24 10. A Temporary Restraining Order will prevent a fraudulent sale of the
25 Property on July 25, 2011, to a purchaser who will acquire nothing other than the
26 opportunity to sue CRC for fraud and defend a succession of lawsuits over title.

27 11. Defendant will not be harmed by a short delay in the nonjudicial sale of
28 the Property pending a hearing on Plaintiff's request for a preliminary injunction,

1 whereas sale of the residence will cause great and irreparable harm to Plaintiff by
2 forcing him to move out of his residence for the past two decades.

3 12. The only attorney known to Plaintiff that has represented defendant
4 California Reconveyance Company in numerous lawsuits in California is
5 AlvaradoSmith, 633 W. Fifth Street, Suite 1100, Los Angeles, CA 90071, (213)
6 629-7038. On July 13, 2011, I mailed a conformed copy of the Complaint to
7 AlvaradoSmith by Priority Mail. On July 14, 2011, I sent an email to Michael
8 Tannatt, Esq., one of CRC's attorneys at AlvaradoSmith, informing him that I had
9 filed a Complaint against CRC. I asked Mr. Tannatt if his office was authorized to
10 accept service of the Complaint on behalf of CRC. Mr. Tannatt replied on July 15
11 that his office was not authorized to accept service of the new Complaint.

12 13. I am informed by All American Attorney Service and believe that the
13 Complaint was served July 15, 2011 on CRC's agent for service of process, CT
14 Corporation System, 818 West Seventh Street, 2nd floor, Los Angeles, CA 90017-
15 3407, (213) 627-8252. California Reconveyance Co.'s headquarters is located at
16 9200 Oakdale Avenue, Chatsworth CA 91311-6505, (800) 892-6902.

17 I declare under penalty of perjury under the laws of the State of California
18 that the foregoing is true and correct. Executed on July 18, 2011.

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21 _____
22 Douglas Gillies
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JUL 20 2011

GARY M. BLAIR, Executive Officer
BY *Kristi Temple*
KRISTI TEMPLE, Deputy Clerk

**SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA BARBARA**

DOUGLAS GILLIES,

Plaintiff,

v.

CALIFORNIA RECONVEYANCE CO.

and DOES 1-50

Defendants.

Case No. 1381828

~~(Proposed)~~ Temporary
Restraining Order and Order
to Show Cause Re:
Preliminary Injunction

DENISE de BELLEFEUILLE

Date: July 20, 2011

Time: 8:45 AM

Location: 1100 Anacapa Street, Santa Barbara, CA 93101

Judge: Hon. Denise de Bellefeuille

Department: 6

Action Filed: July 13, 2011

Upon reading the verified complaint in the above-entitled action, Plaintiff's Ex Parte Application for Temporary Restraining Order and Order to Show Cause re: Preliminary Injunction, and the Declaration of Douglas Gillies, it appears to the satisfaction of the court that this is a proper case for granting a temporary restraining order and order to show cause re: preliminary injunction. Unless the temporary restraining order is granted, great or irreparable injury will result to

1 plaintiff and prospective purchasers before the matter can be heard on notice.

2 IT IS ORDERED that the defendant California Reconveyance Co. appear in

3 Department 6 of this court, located at 1100 Anacapa Street, Santa Barbara CA, on

4 August 18, 2011 at 9:30 am, to show cause why

5 defendant and all agents, employees, and persons acting in concert with

6 defendant, should not be enjoined and restrained during the pendency of this

7 action from doing any of the following:

8 1. Proceeding with a Trustee's Sale, now scheduled for July 25, 2011, of the

9 property located at 3756 Torino Drive, Santa Barbara, CA, APN 049-111-04-00;

10 2. Posting, publishing, or recording a notice of default or notice of trustee's sale

11 describing the residence.

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14 IT IS FURTHER ORDERED:

15 a. Plaintiff shall serve this Order to Show Cause on defendant California

16 Reconveyance Co. in the following time and manner:

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19 b. Proof of service must be delivered to the court on: July 28, 2011

20 c. The parties shall adhere to the following briefing schedule:

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24 IT IS FURTHER ORDERED that, pending the hearing and determination on the

25 above order to show cause, defendant California Reconveyance Co. shall refrain

26 from selling the residence or attempting to sell it or causing it to be sold, either

27 under power of sale pursuant to trust deed or by any foreclosure action.

28 This temporary restraining order shall expire on: August 18, 2011
9:30 am

1 IT IS FURTHER ORDERED that copies of this Order to Show Cause and
2 Temporary Restraining Order shall be served on defendant no later than

3 July 25, 2011.

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5 Date: July 20, 2011

Demoe de Bellefleur
6 Judge of the Superior Court

7 **LENSE de BELLEFEUILLE**

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