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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, WEST DISTRICT**

BARRY S. FAGAN, an individual;

) Case No. SC112044

) DEPT: B

) JUDGE: Norman P. Tarle

vs.

WELLS FARGO BANK, a national banking
association; AMERICAN SECURITIES
COMPANY; a California Corporation; T.D.
Service Company; A California Corporation;
EBERT APPRAISAL SERVICE INC. a
California corporation; **20475 ROCA CHICA**

) **PLAINTIFF BARRY S FAGAN'S REPLY
TO DEFENDANT WELLS FARGO
BANK'S OPPOSITION TO THE MOTION
TO COMPEL PRODUCTION OF
DOCUMENTS AND REQUEST FOR
MONETARY SANCTIONS AGAINST
WELLS FARGO BANK IN THE
AMOUNT OF \$10,012.50 FILED
CONCURRENTLY WITH NOTICE OF
ASSOCIATION OF COUNSEL**

DR., MALIBU, CALIFORNIA 90625, real
property, *in rem*, and DOES 1 to 50,
INCLUSIVE.

Date: September 8, 2011
Time: 8:30 a.m.
Dept.: B

Defendants.

DATE FILED: APRIL 1, 2011
TRIAL DATE: None set.

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

Plaintiff BARRY S FAGAN REPLYs to Defendant Wells Fargo Bank's OPPOSITION to the
REPLY TO WELLS FARGO BANK'S OPPOSITION TO THE MOTION TO COMPEL

1 Motions To Compel and continues to move the Court for an order compelling defendant to
2 respond to Plaintiff's request for production of documents as indicated in Plaintiff's August 12,
3 2011 NOTICE OF ERRATA on file herein and for an order imposing monetary sanctions against
4 Wells Fargo Bank in the amount of \$10,012.50 for its persistent and wrongful obstruction of
5 discovery as referenced in the Supplemental Declaration of Attorney Michael N. Sofris.

6 This Reply is made pursuant to Code of Civil Procedure Sections 2023.020, 2023.030,
7 2031.310 on the grounds that: (1) Wells Fargo Bank has refused to produce documents
8 requested by Plaintiff Barry Fagan for which good cause to produce exists, and (2) Wells Fargo
9 Bank lacks substantial justification for their refusals to provide responses and/or documents
10 warranting sanctions against Wells Fargo Bank in the sum of \$10,012.50

11 This Motion to Compel was originally filed on July 7, 2011. Since the filing of the
12 Motion, Defendant Wells Fargo has provided full and complete responses to some but **NOT**
13 **ALL** of the discovery sought by that Motion. The Notice of Errata To Notice Of Motion To
14 Compel Production Of Document was filed to limit the scope of Plaintiff's Motion To Compel to
15 those Document Requests which Plaintiff contends have not been complied with and to compel
16 the production of those documents.

17 Specifically, Plaintiff moved to compel Defendant to comply with the following request
18 for production of documents as set forth in Plaintiffs request for production of documents, set no.
19 one:

20 **Request No. 3 [as propounded on Defendant Wells Fargo Bank]:** Please produce all
21 original assignments of the mortgage or deed of trust.

22
23 **Request No. 4 [as propounded on Defendant Wells Fargo Bank]:** Please produce all
24 original endorsements and transfers of the mortgage note.

25 **Request No. 5 [as propounded on Defendant Wells Fargo Bank]:** Please produce the
26 original mortgage note.

27 **Request No. 9 [as propounded on Defendant Wells Fargo Bank]:** Please produce the
28 Pooling and Servicing Agreement and all addendums and amendments thereto.

REPLY TO WELLS FARGO BANK'S OPPOSITION TO THE MOTION TO COMPEL

1 **Request No.24. [as propounded on Defendant Wells Fargo Bank]:**Please provide a
2 complete and accurate statement of the actual amount, duly itemized, necessary to reinstate
3 this loan.

4 **Request No. 52 [as propounded on Defendant Wells Fargo Bank]:** Please provide any
5 documentation that would indicate proof that the Defendant owns the subject Mortgage and
6 Note or any other documentation that would represent the Defendant has standing in this
7 case.

8 **Request No. 55 [as propounded on Defendant Wells Fargo Bank]:** Provide the full name,
9 address and phone number of the current holder of the NOTE and DEED OF TRUST in this
10 case including the name, address and phone number of any trustee or other fiduciary.
11

12 **Request No. 56 [as propounded on Defendant Wells Fargo Bank]:** Provide the name,
13 address and phone number of any master servicers, servicers, sub- servicers, contingency
14 servicers, back-up servicers or special servicers for the underlying mortgage debt.
15

16 **Request No. 57 [as propounded on Defendant Wells Fargo Bank]:** Please produce
17 copies of all civil actions, adversary proceedings, or administrative proceedings that have been
18 filed against you and/or the Servicer of this loan at any time in the past 60 months for any
19 alleged misconduct related to mortgage servicing.
20

21
22 Given that Plaintiff now believes that there are multiple instances of Discovery Abuse,
23 Obstruction, and blatant lack of Veracity in Defendant Wells Fargo Bank's Verified Responses
24 to Plaintiff's Requests for Discovery by way of Requests for Production of Documents, Request
25 for Admissions, and Special Interrogatories all on file herein.
26

27 ///

28 ///

1 Examples of those above stated discovery abuses, obstruction and lack of veracity are as follows;

2 1. Cyrus Chen's meet and confer letter dated August 3, 2011 which is attached hereto and made
3 a part hereof directly contradicts Wells Fargo Bank's July 12, 2011 Verified Responses to
4 Plaintiff Request for Production of Documents #9. Mr. Chen stated " NEED PROTECTIVE
5 ORDER" in reference to Mr. Fagan's underlying Request for Wells Fargo Bank to produce a
6 Pool and Servicing Agreement concerning Mr. Fagan's loan. Wells Fargo Bank had provided
7 Mr. Fagan with its Verified Under Penalty of Perjury Response to that same question by stating
8 that "A Pooling and Servicing Agreement does not Exist pertaining to the subject loan
9 because Responding Party originated and still owns the subject loan."
10

11 Clearly Mr. Chen's meet and confer letter dated August 3, 2011 contradicts the July 12, 2011
12 Verified Responses. Moreover, Mr. Chen had admitted to Mr. Sofris that Wells Fargo Bank's
13 Verified Responses may not in fact have been accurate. See Supplemental Declaration of
14 Michael N. Sofris in support of Plaintiff's Reply. Mr. Chen's Declaration is devoid of any
15 conversation that he had had with Mr. Sofris concerning the above meet and confer issue or any
16 meet and confer issue for that matter. Mr. Sofris specifically told Mr. Chen that a Notice of
17 Errata would be filed with the Court concerning limiting Wells Fargo Bank's Obligation in
18 responses to Plaintiff's Motions to Compel and that too has been completely left out of Mr.
19 Chen's Declaration.
20

21 Wells Fargo Bank was served with the August 12, 2011 Notice of Errata and was told the same
22 through a telephone conversation with Mr. Sofris almost one week prior to the filing of that
23 August 12, 2011 Notice of Errata. (See Supplemental Declaration of Michael N. Sofris in
24 support of Plaintiff's Reply)
25

26 2. Wells Fargo Bank's July 12, 2011 Verified Response to Mr. Fagan's Specially Prepared
27 Interrogatory #17 is now also at issue. (Exhibit A)
28

1
2 WELLS FARGO BANK STATES THE FOLLOWING IN RESPONSE TO INTERROGATORY #17:

3 "Investor Number 175263872 IS NOT AN ACTUAL
4 ENTITY OR INVESTOR, BUT INSTEAD, IS AN INTERNAL TRACKING
5 COLLECTIONS NUMBER THAT RESPONDING PARTY RANDOMLY ASSIGNS TO
6 EACH ACCOUNT."
7

8 (Expert Opinion Analysis as provided to Plaintiff Barry S Fagan)

9 **A.** [In my opinion, the only reason for Investor No:
10 175263872 on the Substitution of Trustee is that the
11 ownership of your loan was sold to an unnamed and undisclosed
12 entity.]

13
14 **B.** I am familiar with metadata and naming conventions,
15 especially those used by large organizations.
16 They do not use "investor" to reference a department, that is
17 absurd.

18 **C.** Additionally there are plenty of other documents
19 recorded with county records that I have seen that list the
20 investor and in the cases I have seen it always refers to the
21 owner of the note. Especially when a servicer is
22 involved.
23

24 3. Wells Fargo Bank's July 12, 2011 Verified Response to Mr. Fagan's Request for Admission
25 #4 is now also at issue.
26

27 **A.** Request for Admission number 4 specifically asked Wells Fargo Bank to admit or deny, "that
28 the note at issue in this matter was part of a securitized trust composed of more than one

REPLY TO WELLS FARGO BANK'S OPPOSITION TO THE MOTION TO COMPEL

1 mortgage loan.” To which Wells Fargo stated in their July 12, 2011 Verified Supplemental
2 Response to RFA #4 “DENY”. A fact which is now placed at issue given Mr. Chen’s own
3 August 3, 2011 meet and confer letter (Request for Production of Documents #9 response
4 indicating “NEED PROTECTIVE ORDER” for a document that was verified to not exist?), in
5 addition to Mr. Chen’s own admission to Mr. Sofris in his telephone conversation with Mr.
6 Sofris. (See Supplemental Declaration of Michael N. Sofris)
7

8 4. As a result of the foregoing, an article has been published concerning Request for
9 Production # 9 and Request for Admission Number 4:

10 <http://livinglies.wordpress.com/2011/08/05/why-they-lie/>

11 **WHY THEY LIE**

12 Posted on August 5, 2011 by Neil Garfield

13 SEE **BARRY FAGAN v WELLS FARGO BANK VERIFIED RESPONSES #9 RPD AND**
14 **#4 REQUEST FOR ADMISSIONS** (attached hereto and made a part hereof as Exhibit A)

15 It is always the same. The pretenders will say whatever they want to satisfy their needs at the
16 moment. In Court, they don’t care whether it is true or not, they just say it because the Judge
17 expects them to say it. The reason they do it is because they can: up until recently the
18 representations of counsel in Court proceedings were taken as gospel by Judges on the bench
19 ALL OF THE TIME. Now, with clear evidence of forgery and fabrication all over the media, the
20 pretenders are getting their way MOST OF THE TIME.

21 What will it take to have Judges actually require evidence? More time, I suppose. Meanwhile,
22 people are being terrorized by a group of individuals and companies who have nothing but
23 complete disdain for the American homeowner and would just as soon foreclose on him as look
24 at him, regardless of whether or not he is up to date on his payments.

25 Here is a clear case in point, which is repeated all over the country. I get more reports about
26 these discrepancies with Wells Fargo but it is apparent from the reports that all the banks are
27 doing it. They deny the loan was securitized if they filed the action in the name of a bank,
28 especially if the bank is the same one who originated the loan. They admit that the loan was

REPLY TO WELLS FARGO BANK’S OPPOSITION TO THE MOTION TO COMPEL

1 securitized when they are seeking some relief that can only be obtained by stating that an asset-
2 backed pool exists (even if it doesn't) and that the subject loan is in the pool (even if it isn't).
3 But the main culprit here is myth and ideology. Based upon a double-standard that defies rational
4 explanation, it is perfectly OK for a business to cram down or discharge a lien that was never
5 perfected. That's OK. But it isn't OK for a homeowner to do the exact same thing for the same
6 reasons — the original deal didn't work out. In this case the original deal didn't work out
7 because it couldn't and nobody except the borrower wanted it to work out. The investor had no
8 idea what was being done with investor money.

9 The bottom line that is dragging our economy into a ditch deeper than the one that Bush gave us,
10 is that we would **rather have banks collect taxpayer money and get ownership of homes on**
11 **which they advanced no funds**, than to give the collateral benefit of defects in the loan and
12 transfer procedures to the borrower. It's either the **bank gets a free house or the homeowner**
13 **gets a lien-free house and then still owes money**. Somehow, everyone seems to be in
14 agreement that it is better to give the banks a free house than to allow the operation of existing
15 law.

16 And somehow, the banks have succeeded in controlling the narrative such that it appears as
17 though the homeowner is seeking a free home, not the banks. Neither Judges nor even
18 homeowners can quite grasp the idea that the bank has no financial interest in their loan
19 transaction. Most people walk away handing the keys to complete strangers. If anyone else asked
20 for the keys they would sent packing, but somehow the homeowner presumes that the bank
21 wouldn't be there if it didn't own the loan. It just isn't so, and saying it doesn't make it so either.

22
23 Plaintiff Barry S. Fagan NOW seeks an order awarding monetary sanctions in the sum of
24 \$10,012.50 as requested in the initial motion to compel because, but for Plaintiff filing its motion
25 to compel, Defendant Wells Fargo Bank would have provided **NO SUPPLEMENTAL**
26 responses to the discovery and continues to refuse to produce documents that will support
27 Plaintiff's cause of action as indicated in Plaintiff's July 15, 2011 First Amended Complaint.

28 In addition to the total number of hours Mr. Sofris previously declared that he spent assisting Mr.
REPLY TO WELLS FARGO BANK'S OPPOSITION TO THE MOTION TO COMPEL

1 Fagan with the preparation of his motion to compel, Mr. Sofris also spent the following
2 additional time since the filing of the motion:

3 (a) August 5, 2011 .40 hours Meet and Confer Telephone Conversation with Cyrus Chen

4 (b) August 7, 2011 .75 hours Prepare Notice of Errata

5 (c) August 29, 2011 1.0 Review and assist with the preparation of reply to
6 Opposition To Motion To Compel.

7 Total Additional Time: 2.25 hours x \$450.00 = \$1,012.50

8 None of these fees would have been incurred had Wells Fargo Bank and its counsel fully
9 complied with Mr. Fagan's discovery requests. NOTICE OF ASSOCIATION OF COUNSEL
10 BY ATTORNEY MICHAEL SOFRIS IS HEREBY ATTACHED.

11 As a result, Plaintiff now also believes that Wells Fargo Bank is in violation of CAL. CIV.
12 CODE § 2943. In that they have failed to provide:

- 13 1. A true, correct, and complete "WET INK" original copy (front and back) of the
14 promissory note, with any modification thereto allegedly executed on May 25, 2007, by
15 Barry S. Fagan and payable to WELLS FARGO BANK N.A. in the principal sum of
16 US\$1,000,000, and secured by the above Deed of Trust.
- 17 2. A written beneficiary statement setting forth all those matters required by Section 2943 of
18 the California Civil Code concerning the above promissory note, reflecting the TRUE
19 BENEFICIARY.
- 20 3. An original copy of the above Deed of Trust and all evidence of any recorded
21 substitutions, recorded assignments etc. that affect the aforementioned Deed of Trust to
22 the present date.

23 DATED: August 30, 2011

24
25
26 By: /s/ Barry Fagan _____
27 Barry S. Fagan
28 Plaintiff

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