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5 **UNITED STATES BANKRUPTCY COURT**
6 **CENTRAL DISTRICT CALIFORNIA**
7 **LOS ANGELES DIVISION**

7 In re) Case No.: 2:11-bk-55292-VZ
8) Chapter 13
9 [REDACTED] Aldridge,)
10 Debtor) REPLY TO OPPOSITION TO MOTION FOR
11) SUMMARY JUDGMENT FOR STEPHEN
12) MYLES ALDRIDGE DEBTOR, OR IN THE
13) ALTERNATIVE SUMMARY
14) ADJUDICATION
15)
16) DATE: 03/21/2013
17) TIME: 11:00 A.M.
18) CRTRM: 1368; 13th Floor
19) 255 E. Temple Street, 13th Floor
20) Los Angeles, CA 90012

15
16 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:** Debtor, by and
17 through his counsel of record respectfully submits this REPLY to OneWest Bank, F.S.B.
18 (“OneWest”) Opposition to Debtor’s Motion For Summary Judgment; or in the alternative
19 Summary Adjudication.

20 **I.**

21 **Summary Judgment Standard**

22 Osherow v. Porras (In re Porras), 312 B.R. 81 (Bankr. W.D. Tex., 2004) explained that in an
23 adversary proceeding, summary judgment is appropriate if the moving party can "show that there
24 is no genuine issue as to any material fact and the moving party is entitled to judgment as a
25 matter of law." Fed. R. Civ. P. 56(c); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106
26 S.Ct. 2505, 91 L.Ed.2d 202 (1986); Bailey v. United Airlines, 279 F.3d 194, 198 (3d Cir.2002).
27 An issue is material if its resolution could affect the outcome of the action. Perez v. United
28 States, 312 F.3d 191, 193 (5th Cir.2002), citing Anderson, 477 U.S. at 248, 106 S.Ct. 2505.

1 In deciding whether a fact issue has been created, the court must view the facts and the
2 inferences to be drawn therefrom in the light most favorable to the nonmoving party. See Perez,
3 312 F.3d at 193, citing *Olabisiomotosho v. City of Houston*, 185 F.3d 521, 525 (5th Cir.1999);
4 see also *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S.Ct.
5 1348, 89 L.Ed.2d 538 (1986) (when ruling on a motion for summary judgment, the court must
6 view the evidence in the light most favorable to the non-movant). In other words, the court must
7 accept the nonmovant's version of the facts as true and resolve conflicts in the non-movant's
8 favor. See *Big Apple BMW, Inc. v. BMW of North America, Inc.*, 974 F.2d 1358, 1363 (3d
9 Cir.1992).

10 The moving party bears the initial burden of demonstrating the absence of genuine issues
11 of material fact. See *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23, 106 S.Ct. 2548, 91 L.Ed.2d
12 265 (1986). Once the movant has done so, however, the nonmoving party cannot simply rest on
13 its pleadings. See Fed.R.Civ.P. 56(e). A non-moving party "will not be able to withstand a
14 motion for summary judgment merely by making allegations; rather, the party opposing the
15 motion must go beyond its pleadings and designate specific facts by use of affidavits,
16 depositions, admissions, or answers to interrogatories showing there is a genuine issue for trial."
17 In re *Ikon Office Solutions, Inc.*, 277 F.3d 658, 666 (3d Cir.2002). This requirement is not
18 satisfied by "speculation, conjecture, or fantasy"; it requires sufficient probative evidence to
19 allow a finding in its favor, assuming the evidence is established at trial. *Wilson v. International*
20 *Business Machines Corp.*, 62 F.3d 237, 241 (8th Cir.1995); see also *Brown v. City of Houston,*
21 *Tex.*, 337 F.3d 539, 540-11 (5th Cir. 2003) ("Unsubstantiated assertions, improbable inferences,
22 and unsupported speculation are not sufficient to defeat a motion for summary judgment."),
23 citing *Bridgmon v. Array Systems Corporation*, 325 F.3d 572, 577 (5th Cir.2003) and *Hugh*
24 *Symons Group, PLC v. Motorola, Inc.*, 292 F.3d 466, 468 (5th Cir.2002). In other words, if "the
25 evidence submitted by the nonmoving party is merely colorable or is not significantly probative,
26 summary judgment may be granted because `where the record taken as a whole could not lead a
27 rational trier of fact to find for the nonmoving party, there is no "genuine" issue for trial."
28 *Hawking v. Ford Motor Credit Co.*, 210 F.3d 540, 545 (5th Cir.2000).

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II.

OneWest's Statement of Genuine Issues is Immaterial as Issues for Trial.

The moving party "always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any which it believes demonstrate the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The responding party then has the burden of producing evidence of "specific facts showing there is a genuine issue for trial."

Many of the issues raised as "disputed" in OneWest's Statement of Genuine Issues are errors and are immaterial to the outcome of Debtor's prima facie case. Simply, they are not issues that need to be heard at trial. OneWest has raised no genuine issue of Material Fact in their Statement. In fact, Debtor hereby stipulates and agrees to all corrections made in OneWest's Statement of Genuine Issues with the exception of the disputed fact Number 4. OneWest asserts, at Disputed Fact Number 4, "Debtor owns and resides at the real property known as 515 West Tichenor Street, Compton, CA 90220 subject to the secured claim of OneWest Bank." Debtor asserts that this disputed fact is not a genuine issue of material fact because OneWest provides no admissible evidence to substantiate its claim.

III.

OneWest's Proof of Claim, including Amendments, Declarations, Exhibits and other Documents on Record Do Not Establish It held a Perfected Security Interest in Real Property Belonging to the Debtor By Way of Any Admissible Evidence

Declarations may not substitute for direct evidence. In *re Burg*, 103 B.R. 222 (9th Cir. B.A.P. 1989). What's missing here is evidence referred to in OneWest's Opposition and Declarations, which would include the actual agreements themselves; and proofs of payment to various vendors that would evidence fees paid for services allegedly rendered causing fees to be incurred by the debtor.

Declaration of Christopher Corcoran refers to a Master Custodial Agreement and a replacement, however no such document has been provided in support of this testimony.

1 The Corcoran declaration is inadmissible absent the custodial logs showing the agreement of the
2 parties and movement of documents contained therein.

3 Witnesses are incompetent and lack first-hand knowledge pursuant to FRE 602. The
4 witness's testimony on its face purports to describe observed facts, but the testimony rests on
5 statements of others. Debtor's objection is that the witnesses lack firsthand knowledge.

6 The Declaration of Elaine Victoria Frausto declares to have "personal knowledge or
7 gained knowledge from business records made by a person with knowledge." Ms. Frausto lacks
8 competence and personal knowledge to testify to facts set forth in her declaration at paragraph 3
9 because the document she has referenced is a document created and prepared by another entity,
10 and is not a business record of OneWest. At paragraph 4 of the Frausto Declaration, she declares
11 that OneWest became the constructive holder on behalf of Fannie Mae, yet provides not
12 documentation to support this statement. Her testimony goes on the basis of her "information and
13 belief" rather than her actual knowledge of the facts for which her testimony relies. Frausto
14 Declaration at paragraph 16 is testimony regarding events that took place at the time of the
15 original loan when documents were 'imaged' into the system of an entirely different entity and
16 not her employer, OneWest.

17 Ms. Frausto's declaration dated February 28, 2013 contradicts her prior testimony
18 contained in her declaration dated July 23, 2012 in support of OneWest's Opposition Motion
19 [Docket 36]. Specifically, in her July 23, 2012 declaration, Ms. Frausto at paragraph #4 declares,
20 "OneWest is the current holder of the Note as evidenced by an Allonge reflecting an
21 endorsement in blank from IndyMac. A *true and correct* copy of the Note with Allonge is
22 attached hereto as Exhibit 2." Annexed hereto is a true and correct copy of Victoria Elaine
23 Frausto's declaration dated July 23, 2012 as Exhibit "7."

24 In her current declaration dated February 28, 2013 at paragraph #11 she declares, ". . .
25 Claim 2-2 . . . *inadvertently* attached duplicate copies of the Note in addition to a copy of an
26 Allonge;" and at paragraph #15 she declares, "On November 08, 2012, after production of the
27 original Note from the document custodian and *realization* that the current copy of the original
28 Note was not previously filed on the bankruptcy claims register, OneWest amended its Claim as

1 Claim #2-3 to include a copy of the *correct and original*, blue-ink Note that was produced for
2 inspection to Debtor's counsel." Ms. Frausto's testimony in 2012 asserts to have attached a true
3 and correct copy of a Note with Allonge, yet now explains that the copy of the Note attached to
4 OneWest's amended Claim #2-3 is correct and original. Pursuant to Fed. R. Evid. §613 the
5 declarations of Ms. Frausto should be deemed inadmissible due to the inconsistencies of her
6 testimony, which would render her incompetent as a witness. Without testimony of competent
7 witnesses, all evidence put forth by OneWest in support of its position is inadmissible.

8 **Conclusion**

9 For each of the reasons set forth above Debtor is entitled to judgment as a matter of law.

10 WHEREFORE, the Debtor/Movant respectfully prays of this Court for the following:

11 A. That this Court enters summary judgment in favor of the Debtor/Movant;

12 B. That the Respondent/Defendant be ordered to pay to the Debtor/Movant all sums
13 as prayed for in his Motion;

14 C. That the Defendant be ordered to pay to the Debtor/Movant his reasonable
15 attorneys fees and costs for representation in this matter;

16 D. For such other and further relief as to this Court may seem just and proper.

17
18 **Dated:** March 4, 2013

19 Respectfully Submitted,

20 By: /s/Christine A. Wilton
Counsel for Debtors

21 **DECLARATION OF CHRISTINE A. WILTON**

22 I, Christine A. Wilton, counsel for Debtors, do hereby declare that I have attached a true
23 and complete copy of the Declaration of Victoria Elaine Frausto dated July 23, 2012 [Docket 36
24 at pages 6 through 9] as Exhibit "7."

25 I declare under penalty of perjury under the laws of the United States that the foregoing is
26 true and correct.

27 Executed this 4th Day of March, 2013

28 By: /s/Christine A. Wilton

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ONEWEST BANK, FSB

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA – LOS ANGELES

In re:

[REDACTED] ALDRIDGE
Debtor/Plaintiff.

CASE NO.: 2:11-bk-55292-VZ
CHAPTER: 13

**DEFENDANT’S OPPOSITION TO
MOTION FOR SUMMARY JUDGMENT,
OR IN THE ALTERNATIVE SUMMARY
ADJUDICATION**

DATE: March 21, 2013
TIME: 11:00 am
LOCATION: 255 E Temple Street
Los Angeles, CA
Courtroom 1368, 13th Floor

COMES NOW DEFENDANT ONEWEST BANK, FSB (“OneWest”), and submits the
within Opposition to PLAINTIFF **[REDACTED]** ALDRIDGE (“Plaintiff” or “Aldridge”)’s
Motion for Summary Judgment, or in the alternative, Summary Adjudication, set for hearing at
the date and time note in the above caption.

Defendant respectfully requests this Court deny Plaintiff’s Motion for Summary
Judgment outright as Plaintiffs have no evidence to support any of the causes of action alleged.

1 This opposition is based upon all pleadings, papers, records, and files in this action, this
2 Memorandum of Points and Authorities, Defendant's Objection to Plaintiff's proffered evidence,
3 Defendant's Statement of Genuine Issues, Plaintiff's Own Statement of Uncontroverted Facts,
4 and the Declarations of Victoria Elaine Frausto, Chris Corcoran, and Gerald S. Kim.
5
6
7

8 Respectfully submitted,
9 **BARRETT DAFFIN FRAPPIER**
10 **TREDER & WEISS, LLP**

11 Dated: February 28, 2013

12 By: /s/ Gerald S. Kim
13 GERALD S. KIM
14 Attorneys for Defendant OneWest
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1
2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3 **I. INTRODUCTION**

4 Stephen Myles Aldridge (“Debtor” or “Plaintiff”) filed an objection to Proof of Claim
5 (“Claim”) OneWest Bank, FSB (“OneWest”). After responses to discovery and production of the
6 original Note for inspection, Debtor brings this Motion for Summary Judgment, or, in the
7 Alternative Summary Adjudication (“Motion”). Debtor contends that OneWest has failed to put
8 forth admissible evidence that it holds a perfected in the Property. [MSJ Page 14, line 1-4].
9 However, Debtor admits that there have been amended Claims filed each time with OneWest listed
10 as Creditor. Debtor also fails to mention that OneWest Therefore, at the very least, there are
11 “genuine issues” as to the “material fact” that OneWest has standing to file the claims in question.
12

13 Furthermore, in its original response to the Claim Objection , OneWest properly admitted
14 evidence of all fees and charges in support of its claim.
15

16 The Motion must therefore be denied.

17 **II. STATEMENT OF FACTS**

18 On or about February 08, 2007, STEPHEN M ALDRIDGE (“Debtor”) executed and
19 delivered an Interest Only Fixed Note (“Note”) in favor of OneWest’s predecessor-in-interest
20 IndyMac Bank, FSB, in the original principal amount of \$125,000.00 (“Note”), and at the same
21 time as security for the Note, Debtor executed a Deed of Trust (“Deed of Trust”) for the real
22 property commonly known as [REDACTED] COMPTON, CA 90220 (the
23 “Loan Transaction”). [Defendant’s Separate Statement of Uncontroverted Facts filed concurrently
24 herewith (“Statement”), No. 1].
25

26 On or about February 22, 2007, Deutsche Bank National Trust Company (“Deutsche Bank”)
27 obtained physical custody of the original Note (“Note”) for the Aldridge Loan. Deutsche Bank’s
28

1 business records reflect that the Note contained an endorsement in blank by IndyMac Bank, FSB
2 when DBNTC took custody of the Note on or about February 22, 2007. [Statement No. 5].

3 On March 19, 2009, OneWest acquired the servicing rights for this loan from the Federal
4 Deposit Insurance Corporation ("FDIC") as receiver and became the constructive holder of the
5 Note. OneWest remains the holder of the Note and is the entity which has the right to collect
6 payments under the terms of the Note. OneWest is not the owner of the Note. [Statement No. 6].
7

8 A. PROCEDURAL HISTORY

9 On October 31, 2011, Debtor commenced bankruptcy case number 2:11-bk-55292-VZ
10 under Chapter 13 of the United States Bankruptcy Code. [Statement No. 7]. Debtor, under the
11 penalty of perjury, admits that OneWest Bank is a creditor holding a secured claim under Schedule
12 D of his bankruptcy petition. [Statement No. 8].

13 On November 25, 2011, OneWest timely filed its Proof of Claim ("Claim") as Claim #2-
14 1 in the above-entitled action reflecting that the arrearages due and owing on said note and deed
15 of trust totaled \$26,583.30. Claim #2-1 included a copy of the Note prior to it being endorsed.
16 [Statement No. 9].
17

18 On June 06, 2012, Debtor filed a Motion to Disallow OneWest's Claim ("Claim
19 Objection"). Debtor's Motion alleged that the Claim should be disallowed because OneWest was
20 not the real party in interest and that the Debtor disputed the amount of the Claim. [Statement
21 No. 10].
22

23 At or around the time when Debtor filed his Claim Objection, Debtor delivered discovery
24 requests for admissions and production of documents to OneWest. One such document
25 production request was for the original Note. [Statement No. 11].

26 On July 23, 2012, OneWest filed its opposition to the Claim Objection. [Statement No.
27 12].
28

1 On July 31, 2012, OneWest amended its Claim as Claim #2-2 reducing its original Claim
2 and arrearages. OneWest removed a \$30 payoff statement fee inadvertently included in the
3 original Claim in addition to \$80 in BPO/appraisal costs. Claim #2-2 inadvertently attached
4 duplicate copies of the Note with a copy of an allonge containing an endorsement in blank by
5 IndyMac Bank, FSB. [Statement No. 13].
6

7 On August 06, 2012, the court converted the Claim Objection to an adversary proceeding.
8 [Statement No. 14].

9 From its receipt of the Note on or about February 22, 2007, Deutsche Bank maintained
10 continuous custody of the Note until on or about October 3, 2012 when, upon OneWest's
11 request, Deutsche sent the Note to OneWest by overnight mail. [Statement No. 15].
12

13 On October 10, 2012, pursuant to a discovery request, OneWest sent the original, blue-
14 ink Note and collateral loan file to its bankruptcy counsel via overnight delivery. [Statement No.
15 16]. On October 11, 2012, in response to Debtor's discovery production request for the original
16 Note, Counsel for OneWest received a file containing a blue-ink Note for the Property by overnight
17 delivery from OneWest Bank. [Statement No. 17].

18 On October 12, 2012, OneWest, through its counsel, produced the original, blue-ink Note
19 with endorsement for inspection by Debtor's counsel. [Statement No. 18].
20

21 On October 15, 2012, OneWest's counsel caused the original Note to be returned to
22 OneWest. [Statement No. 19].

23 On or about November 05, 2012, the original Note was returned to DBNTC, which has
24 since maintained continuous custody of the Note. [Statement No. 20].

25 On November 08, 2012, after production of the original Note and realization that the
26 current copy of the original Note was not filed on the bankruptcy claims register, OneWest
27 amended its Claim as Claim #2-3 to include a copy of the correct and original, blue-ink Note that
28

1 was produced for inspection to Debtor's counsel. [Statement No. 21].

2 On February 07, 2013, Debtor filed the instant Motion for Summary Judgment
3 ("Motion").

4 III. LEGAL ARGUMENT

5 **A. STANDARD FOR SUMMARY JUDGMENT**

6 Summary judgment is appropriate where the moving party demonstrates the absence of a
7 genuine issue of material fact and entitlement to judgment as a matter of law. FRCP, Rule 56(c);
8 *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S.Ct. 2548 (1986).

9 The party moving for summary judgment must show by the "the pleadings, depositions,
10 answers to interrogatories, and admissions on file, together with the affidavits, if any, show that
11 there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as
12 a matter of law." FRCP, Rule 56(c); *Hansen v. United States*, 9th Cir. 1993) 7 F.3d 137, 138, citing
13 *Hughes v. United States*, (9th Cir. 1992) 953 F.2d 531, 541.

14 If the plaintiff bears the burden of proof on an issue, he must establish beyond all
15 peradventure all of the essential elements of the claim or defense to warrant judgment in this favor.
16 *Fontenot v. Upjohn Co.*, 780 F.2d 1190, 1194 (5th Cir. 1986); *Southern California Gas Co. v. City of*
17 *Santa Ana*, 336 F.3d 885, 888 (9th Cir. 2003).

18 "Rule 56's purpose is to avoid useless trial where material facts are not disputed and the law
19 points unerringly to the conclusion that one of the parties is entitled to judgment as matter of law."
20 *Utility Control Corp. v. Prince William Constr.* (4th Cir. 1977) 558 F.2d 716, 719.

21 **B. ONEWEST'S AMENDED CLAIMS CORRECT THE RECORD AND 22 PROPERLY RELATE BACK TO THE ORIGINAL CLAIM**

23 A proof of claim form, executed under penalty of perjury and filed with the bankruptcy
24 court, is prima facie evidence of the validity and amount of the claim or interest. FRBP 3001(f); *In*
25 *re Southern Calif. Plastics, Inc.* 165 F.3d 1243, 1247-1248 (9th Cir. 1999).

1 An amended claim filed after the claims bar date will be disallowed as untimely if viewed as
2 an entirely distinct and separate claim. *California Practice Guide, Bankruptcy* (March, Ahart, &
3 Tchaikovsky [Page 17-143, §17.1241]. A subsequent claim will be allowed as timely filed if the
4 Court views it as an amendment that “relates back” to the filing date of the earlier (original claim).
5 *Id.* However, a creditor will generally be permitted to amend its claim after the bar date to cure a
6 defect or describe the claim with greater particularity. *In re South Atlantic Fin'l Corp.* (111th Cir.
7 1985) 767 F2d 814, 819; *In re Grivas* (BC SD CA 1991) 123 BR 876, 878.

9 OneWest timely filed its original Claim as #2-1, before the March 14, 2012, claims bar date.
10 The amendments to the claim do not substantially alter the substance of the Claim. The Claim was
11 amended¹ the first time to reduce the original Claim amount and inadvertently attached an incorrect
12 copy of the Note. The Claim was amended² a second time, again reduced from the original Claim
13 amount, this time to correct the record and attach the copy of the original Note in custody of the
14 document custodian. Each time the amended claims were submitted on a proof of claim form,
15 executed under the penalty of perjury to the best of the filing person’s “knowledge, information,
16 and reasonable belief.” [Statement Nos. 9, 13]. Unknown to those persons filing Claim Nos.2-1
17 and 2-2 at the time, they attached copies of notes imaged to the computer system, not the actual
18 copy of the original Note with the document custodian. [Statement Nos. 9, 13]. *
19

20 The amendments to the Claim sought to cure the amount of the original Claim and attach the
21 proper chain of note endorsements in blank. [Statement No. 21]. The amended Claims did not
22 prejudice the Debtor as he was properly noticed that the creditor was and has always been OneWest
23 during the pendency of this bankruptcy. Further, there was no prejudice as to the amount of the
24 Claim as it was reduced, not increased, by the amendments. Debtor was aware that OneWest was
25 the creditor, as reflected in Schedule “D” of his petition. OneWest attempted to correct the record of
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1 its standing, which, not coincidentally, confirmed Debtor's admission of OneWest as the creditor to
2 this Claim. [Statement Nos. 8, 21].

3 The amended Claims properly "relate back" to the filing date of the claim originally filed by
4 OneWest as the amendments sought only to correct the original Claim, not create new Claims.
5 Thus, the Amended Claim #2-3 raises genuine issues of material fact, if it does not outright prove
6 that Debtor's Claim Objection lacks merit.
7

8 **C. ONEWEST BANK, FSB, IS A "CREDITOR" PURSUANT TO 11 U.S.C. §101**
9 **AND REAL PARTY IN INTEREST**

10 Federal Rule of Civil Procedure, Rule 17(a), applicable to the bankruptcy court by Federal
11 Rule of Bankruptcy Procedure 7017, provides that all actions must be prosecuted in the name of a
12 "real party in interest." The function of this rule is to protect a defendant against a subsequent action
13 by the party actually entitled to recover. *In re Veal*, 450 B.R. 897, 908 (9th Cir. BAP 2009).

14 11 U.S.C. §101(10)(A) of the Bankruptcy Code defines "creditor" as an "entity that has a
15 claim against the debtor that arose at the time of or before the order for relief concerning the
16 debtor." 11 U.S.C. §501(A) provides that a "creditor...may file a proof of claim." Very simply,
17 OneWest is rightly the "creditor" to the Claim because it has the rights to enforce the promissory
18 note that Debtor executed.
19

20 OneWest is a creditor entitled to enforce the Note secured by the Property and the only party
21 which has filed a Claim for the loan on this Property. The claims bar date has passed and no other
22 parties have come forth demanding that the Debtor make payments to them. Thus, there is no
23 danger of a subsequent action demanding payment by another party because OneWest is the party
24 actually entitled to recover.
25

26 In *Veal*, the 9th Circuit Bankruptcy Appellate Panel analyzed the Uniform Commercial
27 Code ("UCC") and recognized the concept that a person can be entitled to enforce the note without
28 having any ownership interest. *Id* at 914, (Footnote 25). Article 3 of the UCC provides a set of

1 rules governing the obligations of parties on a note, including who may enforce those obligations
2 and to whom those obligations are owed. A “person entitled to enforce” the Note can acquire such
3 status under UCC Article 3 by showing that 1) the note is payable to that person and is in possession
4 of the note; 2) the note is payable to the bearer (endorsed in blank) who is in possession of the note;
5 or 3) the person is a “non-holder in possession of the note who has the rights of a holder.” *Id* at 911.
6 OneWest has submitted evidence that the note is payable to it as the bearer and that it is in
7 possession of the Note. [Statement No. 21] OneWest made the original Note available for viewing
8 and effectively demonstrated its authority as the person entitled to enforce the note. [Statement No.
9 18].

11 The original Note contains an endorsement in blank from IndyMac Bank, FSB. [Statement
12 No. 22]. OneWest is the current holder of the Note and entitled to enforce it in this bankruptcy
13 proceeding. [Statement Nos. 6, 22, 23]. The owner of the loan is Federal National Mortgage
14 Association (“Fannie Mae”). [Statement No. 6]. Debtor’s reply to OneWest’s original opposition to
15 the Claim Objection attached Fannie Mae guideline Section 202. [Reply, Exhibit 6]. Section
16 202.07.02 aptly describes that “Fannie Mae temporarily gives the servicer possession of the
17 mortgage note whenever the servicer, represents the interests of Fannie Mae” in bankruptcy
18 proceedings. The guideline further provides that when the note is held by a document custodian, as
19 in this case, the servicer has constructive possession of the note. Thus, OneWest Bank, FSB, is the
20 authorized loan servicer, noteholder, and party entitled to enforce the Note.

23 Debtor misconstrues Murray’s verified response that the Note was endorsed “some time
24 after 11/25/2011” [MSJ Page 10, line 9] referring to Response to Debtor’s First Amended Request
25 for Admission]. The admission that the Note was endorsed after November 25, 2011, was not made.
26 The phrase “since been endorsed in blank” merely describes that the endorsement of the Note
27 occurred later. There is no mention of the date of November 25. The business records the document
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1 custodian of the original Note confirm that the Note was already endorsed in blank by IndyMac,
2 FSB when the custodian took custody of the original note on February 22, 2007. [Statement No. 5].

3 OneWest possesses the original Note, which is kept by a third party document custodian.
4 [Statement Nos. 3 and 23]. The Note is controlled by OneWest and available to be delivered to it
5 at any time [Statement No. 23]. On October 03, 2012, OneWest exercised its powers of
6 possession in response to the discovery request of Debtor, and delivered the original, blue ink
7 promissory Note for inspection by Debtor's counsel. [Statement Nos. 15-18].

8 OneWest is the real party in interest as both the holder of the Note and "person entitled to
9 enforce" the Note. [Statement No. 23]. Debtor acknowledged and admitted in his original Schedule
10 "D" of his bankruptcy petition that OneWest is the Secured Creditor of the first deed of trust on the
11 Property. [Statement No. 8].

12 Based on the foregoing, OneWest has shown that there are genuine issues of material fact as
13 to its standing and the Motion must be denied.
14

15
16 **D. ONEWEST'S AMENDED CLAIM REDUCED THE ARREARS BASED**
17 **UPON PROPERLY AUTHENTICATED EVIDENCE OF THE FEES AND**
18 **CHARGES CONTAINED ON THE ORIGINAL CLAIM**

19 The fees and costs included on the Proof of Claim are substantially accurate and have been
20 substantiated. Debtor alleges that the invoices in submitted in support of OneWest's Claim were
21 not properly authenticated, and therefore, that the exhibits attached to the declaration of Victoria
22 Elaine Frausto are not admissible. [MSJ, Page 11, Line 5-6]. Debtor also alleges that the invoices
23 constitute hearsay. [MSJ, Page 11, Lines 10-11].

24 However, in Paragraphs 1 and 2 of her declaration, Frausto attests to the fact that she is
25 custodian of the books, records, and files for OneWest and that she has gained knowledge of the
26 business records made at or about the time of the events to which they relate in the ordinary course
27 of business pursuant to the business records exception. [Statement No. 24.] Federal Rules of
28

1 Evidence 803(6)(A-D). The invoices, even though generated by third party vendors, are business
2 records found in OneWest's database that Frausto as an authorized representative of OneWest has
3 personal knowledge of and can properly attest to. Thus, the invoices are admissible evidence with
4 proper foundation.

5 The Claim correctly reflects that almost all fees and charges due and owing at the time
6 the bankruptcy was filed by Debtor. The Claim has since been reduced by deleting Payoff
7 Statement Fee of \$30.00 and an additional \$80 in BPO/appraisal fees.

8 Further, the "Execution date time" stamp included on the invoices in Exhibits 9 and 10 of
9 the Frausto Declaration indicate the date and time the invoices were printed from OneWest's
10 computer system, not the dates fees were incurred. [Statement No. 25]. The "Invoice Level
11 Exceptions Possible Duplicate Invoice" text on Exhibits 9 and 10 of the Frausto Declaration is a
12 disclosure and reminder on the invoice to OneWest employees to verify such invoice is not a
13 duplicate. Each invoice contained in the Frausto Declaration was verified not to be duplicate
14 invoices. An inspection of properties with loans in default occur once every 30 Days. [Statement
15 No. 26]. eMortgage Logic, LLC ("eMortgage"), invoices for desktop valuations are automatically
16 generated in bulk on Mondays and then uploaded to OneWest's vendor system. The invoice from
17 eMortgage attached as Exhibit 10 to the Frausto Declaration was dated, July 4, 2011, which fell on a
18 Monday. [Statement No. 27].

19 Thus, OneWest has submitted admissible evidence that the fees and charges have been
20 incurred. The Motion must be denied.

21 IV. CONCLUSION

22 For the reasons set forth herein, as well as the evidence outlined in the accompanying
23 declarations, OneWest has, at the very least, raised genuine issues of material fact. OneWest is in
24 possession of the original Note and is entitled to enforce it. OneWest has been the only creditor
25 to make a claim and assert its right to collect payments on the Note.

1 Further, the Declaration of Frausto properly authenticates and admits evidence of
2 invoices paid and found in the business records of OneWest.

3 Accordingly, Defendant OneWest respectfully request that this Court deny Plaintiff's
4 Motion for Summary Judgment, or in the alternative, deny summary adjudication.

5
6 Respectfully submitted,
7 **BARRETT DAFFIN FRAPPIER**
8 **TREDER & WEISS, LLP**

9 Dated: February 28, 2013

10 By: /s/ Gerald S. Kim
11 GERALD S. KIM
12 Attorneys for Defendant OneWest
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Attorneys for Debtors

4
5 **UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT CALIFORNIA**

6 In re

7 [REDACTED] Aldridge,
8 Debtor

) Case No.: 2:11-bk-55292-VZ

) Chapter 13

) [PROPOSED] STATEMENT OF
) UNCONTROVERTED FACTS AND
) CONCLUSIONS OF LAW ON DEBTOR'S
) MOTION FOR SUMMARY JUDGMENT
) PURUSANT TO LOCAL BANKRUPTCY
) RULE 7056-1

) Date: 03/21/2013

) Time: 11:00 a.m.

) Crtrm: 1368; 13th Floor

13 Under Local Bankruptcy Rule 7056-1, [REDACTED] Aldridge, Debtor/Movant hereby
14 submits the following "[Proposed] Statement of Uncontroverted Facts and Conclusions of Law"
15 in support of his Motion For Summary Judgment.

16 **STATEMENT OF UNCONTROVERTED FACTS**

UNCONTROVERTED FACTS	SUPPORTING EVIDENCE
18 1. "On March 19, 2009, the Federal Deposit 19 Insurance Corporation (FDIC) completed the sale 20 of IndyMac Federal Bank, FSB, Pasadena, California, to OneWest Bank, FSB, Pasadena, 21 California. 22 OneWest Bank, FSB is a newly formed federal savings bank organized by IMB HoldCo 23 LLC. All deposits of IndyMac Federal Bank, FSB have been transferred to OneWest Bank, 24 FSB. On July 11, 2008, IndyMac Bank, F.S.B., Pasadena, CA was closed by the Office of Thrift 25 Supervision (OTS) and the FDIC was named Conservator. All non-brokered insured deposit 26 accounts and substantially all of the assets of IndyMac Bank, F.S.B. have been transferred to 27 IndyMac Federal Bank, F.S.B. (IndyMac Federal Bank), Pasadena, CA "assuming institution") a 28 newly chartered full-service FDIC-insured	SOURCE: http://www.fdic.gov/bank/individual/failed/IndyMac.html ; and OneWest's Response to Debtor's First Request For Interrogatories (Rog #10); Ex. 5

institution."	
UNCONTROVERTED FACTS	SUPPORTING EVIDENCE
2. AMENDED AND RESTATED INSURED DEPOSIT PURCHASE AND ASSUMPTION AGREEMENT did not include the purchase of promissory notes or mortgages, but rather only included under Section 3.1(u) "mortgage servicing rights and related contracts."	SOURCE: http://www.fdic.gov/bank/individual/failed/IndyMac_P_and_A.pdf
3. A voluntary petition under Chapter 13 of the Bankruptcy Code was filed by the Debtor on 10/31/2011	[Docket "1"]
4. Debtor owns and resides at real property known as 515 West Tichenor Street, Compton, CA 90220.	Aldridge Decl. ¶ 2. [Docket 38]
5. A Proof of Claim No. 2 was filed in the underlying bankruptcy case by OneWest Bank, FSB on 11/25/11. The OneWest claim consists of the following: a. Official Form B10, listing Creditor as OneWest Bank, FSB. Under "Basis for Claim" is listed, "Money Loaned;" b. A "Exhibit A" sheet showing the total amount of arrears as \$26,583.30; c. A copy of a "Interest Only Fixed Rate Note" executed by Debtor on 02/08/2007, showing the Lender is "Indymac Bank, F.S.B., A Federally Chartered Savings Bank;" d. A copy of a "Deed of Trust" executed by Debtors on 02/08/07 naming Indymac Bank, F.S.B., A Federally Chartered Savings Bank, as "Lender;" Landamerica Gateway Title as "Trustee;" and Mortgage Electronic Registration Systems, Inc. ("MERS") acting solely as "nominee" and "beneficiary;"	Ex. 1
6. On 06/06/2012 Debtor filed his Motion to Disallow OneWest's Claim.	[Docket
7. On 07/23/2012 OneWest filed its Opposition to Debtor's Motion. In support of its Motion OneWest provided the following: Declaration of Victoria Elaine Frausto dated 07/23/2013;	[Docket 36]

1 Ex. 1 is a copy of Proof of Claim No. 2 dated
 11/23/2011;
 2 Ex. 2 is a copy of an Allonge;
 3 Ex. 3 is a copy of an Assignment of Deed of
 Trust dated 01/25/2011;
 4 Ex. 4 is a copy of a county recorder lead sheet,
 and Important Notice of Default dated
 5 02/15/2011;
 6 Ex. 5 is a letter addressed to the Debtor from
 IndyMac Mortgage Services dated 05/25/2011;
 7 Ex. 6 is a copy of a POC LC Breakdown;
 8 Ex. 7 is a copy of an invoice from Quality Loan
 Service Corporation dated 06/12/2011;
 9 Ex. 8A is a copy of a cost description;
 10 Ex. 8B is a copy of an invoice from Quality
 Loan Service Corporation submitted date
 06/21/2011 ;
 11 Ex. 8C is a copy of a cost description from
 Quality Loan Service Corporation;
 12 Ex 8D is a copy of a cost description;
 13 Ex 8E is a copy of a cost description;
 14 Ex 9 is a copy of nine invoices from LPS Field
 Services, Inc. dated 02/22/2010, 03/29/2010,
 15 10/11/2010, 11/03/2010, 12/06/2010,
 01/06/2011, 02/03/2011, 03/07/2011,
 16 04/07/2011, 05/09/2011, and 06/13/2011;
 17 Ex 10 are copies of invoices from Hansen
 Quality dated 07/15/2009, eMortgage Logic,
 18 LLC. dated 07/04/2011, Hansen Quality dated
 07/03/2011;
 19 Ex. 11 is a copy of an Escrow Account
 Disclosure Statement dated 11/14/2011.

20 8. A true and correct copy of the Claim No. 2
 21 with Note and Deed of Trust was affixed to
 22 OneWest's Opposition to Debtor's Motion as
 Exhibit 1.

Frausto Decl. ¶ 3.

23 9. On 07/31/2012 OneWest caused to be filed
 24 an Amended Claim, executed under penalty of
 25 perjury that the information provided was true
 26 and correct by Nickolaus A. McLemore, of
 27 Brice Vander Linden and Wernick, PC as
 authorized agent for OneWest.

Ex. 2

28 OneWest's Amended claim consists of the

1 following:

2 a. Official Form B10, listing Creditor as
3 OneWest Bank, FSB. Under "Basis for Claim"
4 is listed, "Money Loaned;"

5 b. A copy of a Mortgage Proof of Claim
6 Attachment showing the total amount necessary
7 to cure default as of the petition date is
8 \$26,473.30;

9 c. A copy of a "Interest Only Fixed Rate Note"
10 executed by Debtor on 02/08/2007, showing the
11 Lender is "Indymac Bank, F.S.B., A Federally
12 Chartered Savings Bank;"

13 d. A copy of a "Interest Only Fixed Rate Note"
14 executed by Debtor on 02/08/2007, showing the
15 Lender is "Indymac Bank, F.S.B., A Federally
16 Chartered Savings Bank;"

17 e. A copy of an Allonge executed by
18 IndyMacBank, with a stamp endorsement in
19 blank, which bears the stamped signature of a
20 Cynthia Prees, Assistant Vice President of
21 IndyMac Bank, FSB.

22 10. The copy of the Note attached to
23 Proof of Claim 2-1 is a true and accurate
24 copy of the note prior to endorsement of
25 the Note. The original Note has since
26 been endorsed in blank and has been
27 made available for viewing and copies to
28 the Debtor.

Ex. 3; OneWest's Responses to Debtor's
First Amended Request For Admissions

11. On 11/08/2012 OneWest filed a Second
Amend Proof of Claim executed under penalty
of perjury by Paul W. Cervenka of Brice Vander
Linden and Wernick, PC as authorized agent for
OneWest. OneWest's Second Amended claim
consists of the following:

a. Official Form B10, listing Creditor as
OneWest Bank, FSB. Under "Basis for Claim"
is listed, "Money Loaned;"

b. A copy of a Mortgage Proof of Claim
Attachment showing the total amount necessary
to cure default as of the petition date is
\$26,473.30;

c. A copy of a "Interest Only Fixed Rate Note"
executed by Debtor on 02/08/2007, showing the
Lender is "Indymac Bank, F.S.B., A Federally
Chartered Savings Bank that appears to have an
endorsement stamp at the foot of the signature

Ex. 4

1	page purportedly endorsing the Note in blank and executed by a Cynthia Prees;"	
2	12. Fannie Mac Mortgage Association ("Fannie Mae") is the owner of Debtor's loan, Note and security interest.	OneWest's Response to Debtor's First Request For Interrogatories (Rog #2); Ex. 5; and Aldridge Decl. ¶ 4.
3		
4	13. On February 22, 2007, the original Note was delivered to Deutsche Bank, the document custodian.	OneWest's Response to Debtor's First Request For Interrogatories (Rog #10); Ex. 5
5		
6	14. April 1, 2007, Federal National Mortgage Association ("Fannie Mae") purchased the loan.	OneWest's Response to Debtor's First Request For Interrogatories (Rog #10); Ex. 5
7		
8	15. October 3, 2012, the original Note was released to Lucy Castro at OneWest Bank, for preparation and delivery per Debtor's discovery request to inspect the original note.	OneWest's Response to Debtor's First Request For Interrogatories (Rog #10); Ex. 5
9		
10	16. On October 29, 2012 OneWest caused to be filed a copy of an Allonge in another Debtor's case that is substantially identical to the Allonge filed in the instant matter.	Ex. 6
11		
12	17. The endorsement stamp on the Allonges filed in both the instant case and that of another debtor bear substantially the same information as contained on OneWest's 2 nd Amended Proof of Claim Note, "Pay to the Order of _____ without recourse IndyMac Bank, F.S.B., By: Cynthia Prees, Assistant Vice President."	Ex. 4; and Ex. 6
13		
14		
15		
16		

CONCLUSIONS OF LAW

I.

DEBTOR IS ENTITLED TO SUMMARY JUDGMENT BECAUSE ONEWEST BANK, F.S.B. ("OneWest") PROOFS OF CLAIM NO: 2, 2-1, AND 2-2 FAILED TO PRODUCE ANY ADMISSIBLE EVIDENCE TO SUPPORT IT HAS A PERFECTED SECURITY INTEREST IN REAL PROPERTY BELONGING TO THE DEBTOR PURSUANT TO RULE 3001(d).

A. Rule 3001(d) and lack of evidence would render OneWest's Claims unenforceable against the Debtor pursuant to 11 U.S.C. 502(b)(1).

To have an allowed proof of claim, the claimant must prove an initial fact: that it is the creditor to whom the debt is owed or, alternatively, that it is the authorized agent of the creditor, In re Parrish, 326 B.R. 708 (Bankr. N.D. Ohio, 2005). OneWest's Proof of Claims 2, 2-1 and 2-2 all state that the Creditor is OneWest Bank, FSB. Therefore, it must establish, by admissible evidence that it has a perfected security interest in the real property belonging to the Debtor.

1 OneWest failed to provide any admissible evidence to establish prima facie validity of a
2 perfected security interest in the real property of the Debtor.

3 **B. Real Party in Interest Must Be Named**

4 Rule 17(a) of the Federal Rules of Civil Procedure provides that every action “shall be
5 prosecuted in the name of the real party in interest.” A creditor is a person, corporation, or other
6 entity to whom a debtor owes a debt that was incurred before the date of the bankruptcy filing.
7 See 11 U.S.C. §101 (10). The Debtor does not owe a debt to OneWest, but rather to Fannie Mae.
8 Thus, OneWest is not the proper Creditor in this case.

9 Standing considerations involve both “constitutional limitations on federal court
10 jurisdiction and prudential limitations on its exercise.” Warth v. Seldin, 422 U.S. 490, 498
11 (1975). Constitutional standing concerns whether a claimant’s stake in a matter is sufficient to
12 create a “case or controversy” to which the federal judicial power under Article III of the
13 Constitution may extend. *Id.* at 498-99; Pershing Park Villas Homeowners Assoc. v. Unified
14 Pac. Ins. Co., 219 F.3d 895, 899 (9th Cir. 2000); Lujan v. Defenders of Wildlife, 504 U.S. 555,
15 559-60 (1992).

16 In analyzing prudential standing requirements, the Supreme Court has held:
17 “[T]he plaintiff generally must assert his own legal rights and interests, and cannot rest his claim
18 to relief on the legal rights or interests of third parties.” Warth v. Seldin, 422 U.S. [at 499].

19 OneWest has no legal rights or interests in this case and appears to be acting on behalf of
20 another entity who has not joined in this action, consented to it, nor provided any admissible
21 evidence to support its positions. OneWest has presented no admissible evidence to support they
22 are the real party in interest.

23 **C. Admissibility of Evidence**

24 American Express v. Vee Vinhnee, 336 B.R. 437, 9th Cir.BAP (Cal.), 2005 required a
25 foundation to admit electronic records into evidence; Federal Rule of Evidence [FRE] 901
26 requires authentication or identification of evidence as a condition precedent to its admissibility.
27 FRE 901(b)(4) provides, “[a]pppearance, contents, substance, internal patterns or other
28 distinctive characteristics and the like, are taken in conjunction with circumstances.” Here,

1 OneWest has put forth not less than four (4) variations of a Note, one bearing an endorsement
2 stamp that also appears on an Allonge; they have caused to be recorded two (2) assignments of
3 deed of trust papers, at a time when the original lender had ceased to exist as a legal entity. The
4 documents put forth by OneWest are questionable, if not outright fabricated.

5 Debtor asserts that pursuant to FRE 105 that the evidence put forth by OneWest be
6 admitted solely for the purpose of impeaching the declarations of Victoria Elaine Frausto and
7 Suchan Murray, FRE 601, 602. In example, OneWest Admits, via Suchan Murray's verified
8 response [Exhibit "3"] that the Note in question was endorsed at some time after 11/25/2011,
9 which is legally impossible since IndyMac was taken over by the FDIC in 2009 and did not exist
10 as an entity.

11 In re Hwang, 396 BR 757 (Bankr C D Cal 2008) provided that a loan servicer as agent or
12 nominee of holder of note, may seek relief from stay only if note holder joins or ratifies motion;
13 In re Jacobson, 2009 WL 567188 (Bankr W.D. Wash) found that the servicer of deed of trust was
14 not a 'real party in interest' and lacked standing to move for relief from stay. In this case, we
15 have a loan servicer who is likely acting on behalf of the owner, Fannie Mae where they have not
16 joined or ratified OneWest's actions.

17 II.

18 EVEN IF ADMISSIBLE EVIDENCE IS PRODUCED, ONEWEST, F.S.B. HAS NO 19 RIGHT TO ENFORCE DEBTOR'S NOTE AS HOLDER, CONSTRUCTIVE HOLDER,

20 A. Fannie Mae Guidelines Do Not Trump Laws

21 The declaration of Victoria Elaine Frausto states under numeral 6, "Pursuant to Fannie
22 Mae guidelines, the authorized loan servicer is designated as the 'holder' of the Note in the event
23 of a bankruptcy filing." According to Fannie Mae's guidelines, this apparently happens
24 automatically. Fannie Mae Guidelines can be found on the web at
25 <https://www.efanniemae.com/sf/guides/ssg/svcg/svc031412.pdf>. Debtor directs the court's
26 attention to Section 202.07.02 of these guidelines at page 102-39. Annexed hereto are a true and
27 correct copy of Section 202.07.02 of these guidelines at page 102-39 of Fannie's guidelines as
28 Exhibit "7." Under this Section, Fannie Mae allegedly transfers "temporary possession" of the

1 note to the servicer when it represents the interests of Fannie Mae in bankruptcy cases. This
2 temporary transfer of possession occurs “automatically” and Fannie Mae is in possession of the
3 note at that time holds the note on behalf of the servicer.

4 These guidelines provide an automatic transfer of possession to any of Fannie Mae’s
5 authorized servicers magically upon the filing of a bankruptcy case, all the while Fannie Mae
6 remains in physical possession of the Note and Deed of Trust. Before the bankruptcy case is
7 filed, they hold it for themselves, and after a bankruptcy case is filed Fannie Mae holds it for the
8 servicer. However, when the servicer has finished their required work in legal proceedings, they
9 then give back possession of the Note and Deed of Trust to Fannie Mae, which likely also occurs
10 automatically.

11 UCC §3-203 Transfer of Instrument; Rights Acquired by Transfer

12 (a) An instrument is transferred when it is delivered by a person other
13 than its issuer for the purpose of giving to the person receiving delivery
the right to enforce the instrument.

14 (b) Transfer of an instrument, whether or not the transfer is a
15 negotiation, vests in the transferee any right of the transferor to enforce the
16 instrument, including any right as a holder in due course, but the transferee
cannot acquire rights of a holder in due course by a transfer, directly or
17 indirectly, from a holder in due course if the transferee engaged in fraud or
18 illegality affecting the instrument.

19 (c) Unless otherwise agreed, if an instrument is transferred for value
20 and the transferee does not become a holder because of lack of
21 indorsement by the transferor, the transferee has a specifically enforceable
22 right to the unqualified indorsement of the transferor, but negotiation of
23 the instrument does not occur until the indorsement is made.

24 Per Fannie Mae’s own guidelines, a transfer of the Note never occurs. Thus, any claim by
25 OneWest that it is the holder of the Note in any capacity is patently false. Additionally, per
26 OneWest’s Verified Responses to Debtor’s First Request For Interrogatories, OneWest explains
27 that the original Note was delivered to Deutsche Bank, the document custodian on February 22,
28 2007; that on April 01, 2007, Fannie Mae purchased the loan. On October 03, 2012 the original
Note was released to Lucy Castro at OneWest Bank, for preparation and delivery per Debtor’s
discovery request to inspect the original Note. At no time prior to the filing of the Debtor’s
bankruptcy case has OneWest documented a physical transfer of the Note from the document

1 custodian. Nor has OneWest provided any admissible evidence to establish that it holds any
2 legal right to enforce the Note in its own name, or on behalf of another entity.

3 While this may appear to be sufficient for Fannie Mae, its guidelines do not trump the
4 Federal Rules of Civil Procedure, Federal Rules of Evidence, relevant state laws and the
5 Bankruptcy Code. The Real Party in interest was not named on the Proof of Claim filed in the
6 Debtor's case. OneWest may be acting as the servicer on behalf of Fannie Mae, but is not the
7 real party in interest. OneWest is not the creditor and therefore the Proof of Claim filed by
8 OneWest must be disallowed.

9 **B. OneWest's Argument that it is the Holder of Debtor's Note Fails**

10 OneWest asserts that it is the holder of the original Note, thus is the noteholder with
11 enforcement rights against the Debtor. However, their argument fails for the following reasons:

12 1. OneWest cannot establish a proper evidentiary foundation for any admissible
13 evidence to support their position;

14 2. OneWest admits on the record that the Note was "subsequently endorsed" after
15 its Proof of Claim No. 2 was filed on November 23, 2011. This renders any endorsement
16 legally impossible because the original lender had ceased to exist since being taken over
17 by the FDIC at some time in 2008;

18 3. OneWest admits that the Note never left the possession of the document
19 custodian until such time as it "ordered" it to be delivered to their attorney for viewing by
20 Debtor's counsel on October 3, 2012;

21 **C. OneWest's Argument that it is the Constructive Holder of Debtor's Note Fails**

22 OneWest will argue that it is the "constructive holder" of the Note on behalf of Fannie
23 Mae with a right to enforce it as such pursuant to Fannie Mae Guidelines. Kemp v. Countrywide
24 Home Loans, Inc. (In re Kemp), 440 B.R. 624 (Bankr. D. N.J. 2010) discussed the problem of
25 possession of the Note as a requirement for a party to enforce it. OneWest cannot be a
26 constructive holder on behalf of a third party without naming that third party and supplying this
27 court with evidence to establish the extent of their authority, if any.

1 **III.**

2 **ALTERNATELY, ASSUMING ONEWEST COULD PROVE THAT IT IS EITHER THE**
3 **HOLDER OF THE NOTE AND MORTGAGE OR THE AGENT OF THE HOLDER,**
4 **THE PROOF OF CLAIM IS STILL INSUFFICIENT BECAUSE ONEWEST FELL**
5 **SHORT OF PROVING THE AMOUNT OF ITS CLAIM.**

6 A. FRE 901 requires the authentication and identification as a condition precedent to
7 admissibility of evidence.

8 The declaration of Victoria Elaine Frausto purports to establish certain invoices [See
9 Frausto Declaration at paragraph 14, page 8] and attaches said invoices as exhibits 6, 7, 8A, 8B,
10 8C, 8D, 8E, 9, 10, and 11 respectively. However, the invoices appear to be from various third
11 parties and do not establish conclusive proof of payment for alleged services contained therein.

12 The invoices attached to OneWest's opposition constitute Hearsay under FRE 801
13 because they are out of court statements made by alleged third party declarants, not made by Ms.
14 Frausto herself asserting to prove the arrearage amount stated by OneWest. As such, the invoices
15 themselves are inadmissible to establish OneWest's arrearage claim.

16 Ms. Frausto declares to have produced a true and correct copy of the accrued late charges
17 as Exhibit "6" to OneWest's Opposition to Debtor's Motion to Disallow its proof of claim(s).
18 However, the sheet produced appears to be a spreadsheet without any foundation to support that
19 the information contained therein is accurate.

20 Ms. Frausto's declaration, paragraph 15, page 9 states, "the payoff statement fee of
21 \$30.00 was inadvertently added to the claim." Thus, by OneWest's own Admissions, the amount
22 of the claim was incorrectly stated.

23 **CONCLUSION**

24 Based on the foregoing, there is no genuine issue as to any material fact. Accordingly,
25 the Debtor's Motion For Summary Judgment should be GRANTED in its entirety.

26 IT IS SO ORDERED.

27 Dated: _____, 2013

28 _____
The Honorable Vincent P. Zurzolo
United States Bankruptcy Judge

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Respectfully Submitted By:
Christine A. Wilton
Law Office of Christine A. Wilton

By: /s/Christine A. Wilton
Christine A. Wilton
Counsel For Debtor/Movant

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4 Attorneys for Debtors

5 **UNITED STATES BANKRUPTCY COURT**
CENTRAL DISTRICT CALIFORNIA
6 **LOS ANGELES DIVISION**

7 In re) Case No.: 2:11-bk-55292-VZ
8 [REDACTED] Aldridge) Chapter 13
9) MOTION FOR SUMMARY JUDGMENT OF
10) STEPHEN MYLES ALDRIDGE DEBTOR,
11) OR IN THE ALTERNATIVE SUMMARY
12) ADJUDICATION
Date: 03/21/2013
Time: 11:00 a.m.
Crtrm: 1368; 13th Floor

13 **PLAINTIFFS' MOTION FOR ENTRY OF A SUMMARY JUDGMENT**

14 COMES NOW the above-named Debtor/Movant, by and through his attorney of record,
15 and hereby moves this Court pursuant to Rule 7056 of the Federal Rules of Bankruptcy
16 Procedure and Rule 56 of the Federal Rules of Civil Procedure and Rule 7056-1 of the Local
17 Bankruptcy Rules for the entry of a summary judgment in his favor and in support thereof
18 respectfully show unto the Court the following:

- 19 1. On October 31, 2011, Debtor commenced bankruptcy case number 2:11-bk-55292-VZ
- 20 2. On November 25, 2011 OneWest timely filed its Proof of Claim No. 2-1.
- 21 3. This matter was commenced by the filing of a Motion To Disallow Proof of Claim
22 No. 2 by the Debtor on or about June 6, 2012. [Docket 23]
- 23 4. On July 23, 2012, OneWest filed its opposition to Debtor's claim objection.[Docket
24 36]
- 25 5. On August 6, 2012, the court converted the objection motion to an adversary
26 proceeding.

1 6. Based on the established and uncontroverted facts that have been developed through
2 discovery and Affidavits secured by the Plaintiff, there are no genuine issues of material fact and
3 that the Debtor/Movant is therefore entitled to judgment as a matter of law.

4 7. The Debtor/Movant is moving this Court for the entry of a summary judgment in
5 favor of the Debtor/Movant.

6 This motion is based upon: (i) the Notice of Motion and Motion; (ii) the
7 accompanying Memorandum of Points and Authorities; (iii) the accompanying
8 Declaration of Debtor's attorney, Christine A. Wilton and documents attached as exhibits
9 thereto; (iv) the accompanying Statement of Uncontroverted Facts and Conclusions of Law; (vii)
10 the pleadings, papers, and other documents on file herein; and (viii) such further material as the
11 Court may consider at or before the hearing on this Motion.

12 WHEREFORE, the Debtor/Movant respectfully prays of this Court for the following:

13 A. That this Court enter a summary judgment in favor of the Debtor/Movant;

14 B. That the Respondant/Defendant be ordered to pay to the Debtor/Movant all sums
15 as prayed for in his Motion;

16 C. That the Defendant be ordered to pay to the Debtor/Movant his reasonable
17 attorneys fees and costs for representation in this matter;

18 D. For such other and further relief as to this Court may seem just and proper.

19 Dated this 7th day of February, 2013.

20 Christine A. Wilton
Law Office of Christine A. Wilton

21 By: /s/Christine A. Wilton
22 Christine A. Wilton
Counsel for Stephen Myles Aldridge
23
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27
28

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5 **UNITED STATES BANKRUPTCY COURT**
CENTRAL DISTRICT CALIFORNIA
6 **LOS ANGELES DIVISION**

7 In re) Case No.: 2:11-bk-52292-VZ
8 Stephen Myles Aldridge,)
9 Debtor) DECLARATION OF CHRISTINE A.
10) WILTON IN SUPPORT OF MOTION FOR
11) SUMMARY JUDGMENT FOR STEPHEN
12) MYLES ALDRIDGE DEBTOR, OR IN THE
13) ALTERNATIVE SUMMARY
14) ADJUDICATION
15)
16) DATE: 03/22/2013
17) TIME: 11:00 A.M.
18) CRTRM: 1368; 13TH FLOOR

19 **DECLARATION OF CHRISTINE A. WILTON**

20 I, Christine A. Wilton, counsel for Debtors, do hereby declare that I have attached a true
21 and complete copy of the proof of claim on file with the Court to which this Motion For
22 Summary Judgment is made as Exhibit "1;"

23 I have attached a true and complete copy of OneWest's Proof of Claim No. 2-2 filed on
24 07/23/2012 as Exhibit "2;"

25 I have attached a true and correct copy of OneWest's Verified Responses To Debtor's
26 First Amended Request For Admissions To OneWest dated 11/01/2012 as Exhibit "3;"

27 I have attached a true and correct copy of OneWest's Proof of Claim No. 2-3 filed on
28 11/08/2012 as Exhibit "4;"

I have attached a true and correct copy of Defendant's Verified Responses to First
Request For Interrogatories as Exhibit "5;"

I have attached and true and correct copy of an Allonge as filed on 10/28/2012 in
bankruptcy case no. 2:12-bk-39839-VZ and a copy of an Allonge filed in the instant case on
07/31/2012 as part of OneWest's Claim No. 2-2 as Exhibit "6."

Dated this 7th Day of February, 2013

1 Respectfully Submitted,
2 By: /s/Christine A. Wilton
3 Christine A. Wilton, State Bar No. 256503
4 Counsel for Debtors
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8 **UNITED STATES BANKRUPTCY COURT**
 9 **CENTRAL DISTRICT CALIFORNIA**
 10 **LOS ANGELES DIVISION**

11 In re 12 Stephen Myles Aldridge, 13 Debtor) Case No.: 2:11-bk-55292-VZ) Chapter 13) MEMORANDUM OF POINTS AND) AUTHORITIES IN SUPPORT OF) DEBTOR'S MOTION FOR SUMMARY) JUDGMENT)) Date: 03/21/2013) Time: 11:00 a.m.) Crtrm: 1368; 13 th Floor
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1 **I. INTRODUCTION**

2 The Debtor initiated the instant bankruptcy case to stop the foreclosure sale of his home
3 after repeated failed attempts to obtain a loan modification. After the commencement of this
4 bankruptcy case, OneWest Bank, FSB ["OneWest"] filed its timely Proof of Claim No. 2. The
5 evidence attached to its proof of claim was insufficient to establish that OneWest held a
6 perfected security interest in the Debtor's real property and so the Debtor filed his Motion to
7 Disallow OneWest's Claim.

8 OneWest initially asserted that it is the Creditor in this instant case. However, their
9 position has shifted to that of 'constructive' holder of a Note on behalf of another entity.
10 OneWest has produced no less than four versions of a Note, two to three versions of a Deed of
11 Trust, and conflicting declarations of its employees who have no personal knowledge regarding
12 the chain of custody of the Note and Deed of Trust in question. OneWest now asserts to have a
13 note with an endorsement, which somehow gives them a holder status to enforce and collect on
14 their proof of claim [See OneWest 2nd Amended Proof of Claim, Ex. 4]. However, even their 2nd
15 Amended Proof of Claim provides no evidence of a perfected security interest, which, if
16 admitted would be nothing more than an unsecured claim. Unfortunately, OneWest's trail of
17 evidence has muddied the record as questionable and tantamount to their pattern and practice
18 before courts throughout the country.

19 The Debtor's position is that OneWest has failed to establish by way of any admissible
20 evidence that it held a perfected security interest in his real property. In fact, OneWest has
21 proven the Debtor's point regarding their pattern and practice in submitting questionable,
22 unauthenticated and inadmissible evidence in this case.

23 As a matter of indisputable fact, OneWest has failed to provide any admissible evidence
24 to support its position. For these reasons, summary judgment should be granted.

25 **II. STATEMENT OF FACTS**

26 Debtor herein incorporates by reference, all facts and exhibits on the record in Debtor's
27 Motion [Docket 23], OneWest's Opposition [Docket 36] and Debtor's Reply [Docket 37].
28

1 "On March 19, 2009, the Federal Deposit Insurance Corporation (FDIC) completed the
2 sale of IndyMac Federal Bank, FSB, Pasadena, California, to OneWest Bank, FSB, Pasadena,
3 California. OneWest Bank, FSB is a newly formed federal savings bank organized by IMB
4 HoldCo LLC. All deposits of IndyMac Federal Bank, FSB have been transferred to OneWest
5 Bank, FSB. On July 11, 2008, IndyMac Bank, F.S.B., Pasadena, CA was closed by the Office of
6 Thrift Supervision (OTS) and the FDIC was named Conservator. All non-brokered insured
7 deposit accounts and substantially all of the assets of IndyMac Bank, F.S.B. have been
8 transferred to IndyMac Federal Bank, F.S.B. (IndyMac Federal Bank), Pasadena, CA "assuming
9 institution") a newly chartered full-service FDIC-insured institution." SOURCE:

10 <http://www.fdic.gov/bank/individual/failed/IndyMac.html> ; and OneWest's Response to Debtor's
11 First Request For Interrogatories (Rog #10); Ex. 5.

12 AMENDED AND RESTATED INSURED DEPOSIT PURCHASE AND
13 ASSUMPTION AGREEMENT did not include the purchase of promissory notes or mortgages,
14 but rather only included under Section 3.1(u) "mortgage servicing rights and related contracts."
15 SOURCE: http://www.fdic.gov/bank/individual/failed/IndyMac_P_and_A.pdf

16 In support of OneWest's Proof of Claim it has submitted the following to this
17 Court:

18 Proof of Claim No. 2: filed 11/25/2011 provided a copy of a Note
19 and Deed of Trust made payable to the original lender IndyMac Bank,
20 F.S.B., a federally chartered savings bank;

21 Opposition Motion Exhibits: filed on 07/23/2012 included a copy
22 of Proof of Claim No. 2; a copy of an Allonge; and a copy of an
23 Assignment of Deed of Trust dated 01/25/2011;

24 Proof of Claim No. 2-2: filed 07/31/2012 provided two copies of a
25 Note and an Allonge;

26 Proof of Claim No. 2-3: filed 11/08/2012 provided a copy of a Note
27 with an endorsement

28 On 10/29/2012 OneWest caused to be filed in another debtor's case, a copy of an
Allonge, which is substantially similar to the Allonge provided in the instant case.

The uncontroverted facts demonstrate OneWest has failed to meet its burden of
producing evidence to support it holds a valid claim against the Debtor's real property and they

1 have a pattern and practice of producing questionable evidence before this Court and other
2 courts, which should heighten this Court's scrutiny of any additional evidence it may provide.

3 **III. LEGAL STANDARD**

4 Summary judgment is appropriate where, reading the record in favor of the non-moving
5 party, "there is no genuine issue as to any material fact," and "the movant is entitled to judgment
6 as a matter of law." Fed. R. Civ. P. 56(c); Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986).

7 A dispute must be as to a material fact to prevent summary judgment. Anderson v. Liberty
8 Lobby, Inc., 477 U.S. 242, 248 (1986). Material facts are those that are necessary to the proof or
9 defense of a claim, as determined by reference to substantive law. *Id.* A genuine issue of material
10 fact exists only if sufficient evidence is presented such that a reasonable fact finder could decide
11 in favor of the nonmoving party. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S.
12 574, 586 (1986). Any alleged issue of fact must be genuine. "When the moving party has carried
13 its burden under Rule 56(c), its opponent must do more than simply show that there is some
14 metaphysical doubt as to the material facts." *Id.* Moreover, the party seeking to oppose summary
15 judgment must do more than introduce "some" evidence, a "scintilla" of evidence, or evidence
16 that is not "significant[ly] probative." Anderson, 477 U.S. at 247, 249, 251. Thus, "[w]here the
17 record taken as a whole could not lead a rational trier of fact to find for the nonmoving party,
18 there is no 'genuine issue for trial.'" Matsushita, 475 U.S. at 587 (internal citation omitted).
19 Summary judgment is appropriate where, as here, the nonmoving party fails to make a sufficient
20 showing on an essential element of his case for which he bears the burden of proof. Celotex,
21 477 U.S. at 322-23.

22 The initial burden is on the moving party to demonstrate an absence of a genuine issue of
23 material fact. *Id.* Once that burden is met, the non-moving party must produce enough evidence
24 to rebut that claim and create a genuine issue of material fact. *Id.* Unless the non-moving party
25 meets this burden, the motion will be granted. Nissan Fire & Marine Ins. Co. v. Fritz Co., 210
26 F.3d 1099, 1103 (9th Cir. 2000).

1 A. Proof of Claim

2 In re Consolidated Pioneer Mortg., 178 B.R. 222 (B.A.P. 9th Cir., 1995) provides that a
3 proof of claim filed in bankruptcy is prima facie valid under § 502(a). Rule 3001(c) requires a
4 creditor to attach a writing to its proof of claim if the creditor bases its[178 BR 226]claim on a
5 writing. Similarly, Rule 3001(d) requires a creditor to accompany a proof of claim with evidence
6 that the creditor perfected a security interest if it claims a security interest in property of the
7 debtor. Rule 3001(f) provides that "a proof of claim executed and filed in accordance with these
8 rules shall constitute prima facie evidence of the validity and amount of the claim."

9 Upon the filing of an objection, the objecting party "must produce evidence tending to
10 defeat the claim that is of a probative force equal to that of the creditor's proof of claim." In re
11 Simmons, 765 F.2d 547, 552 (5th Cir. 1985).

12 The Third Circuit Court of Appeals, in explaining the applicable burdens of proof, aptly
13 stated:

14 The burden of proof for claims brought in the bankruptcy court under 11
15 U.S.C.A. § 502(a) rests on different parties at different times. Initially, the
16 claimant must allege facts sufficient to support the claim. If the averments
17 in his filed claim meet this standard of sufficiency, it is "prima facie" valid.
18 In other words, a claim that alleges facts sufficient to support a legal
19 liability to the claimant satisfies the claimant's initial obligation to go
20 forward. The burden of going forward then shifts to the objector to produce
21 evidence sufficient to negate the prima facie validity of the filed claim. It is
22 often said that the objector must produce evidence equal in force to the
23 prima facie case. In practice, the objector must produce evidence which, if
24 believed, would refute at least one of the allegations that is essential to the
25 claim's legal sufficiency. If the objector produces sufficient evidence to
26 negate one or more of the sworn facts in the proof of claim, the burden
27 reverts to the claimant to prove the validity of the claim by a preponderance
28 of the evidence. The burden of persuasion is always on the claimant.

23 In re Allegheny International, Inc., 954 F.2d 167, 173-74 (3d Cir.1992) (citations omitted);
24 In re Holm, 931 F.2d 620, 623 (9th Cir.1991); In re Pugh, 157 B.R. 898, 901 (9th Cir. BAP
25 1993) (holding claimant bears ultimate burden of persuasion as to validity and amount of the
26 claim by a preponderance of the evidence). See generally Barry Russell, Bankruptcy Evidence
27 Manual, §§ 301.13, 301.47 (West 1994-95 ed.).

1 Since the Proof of Claim No. 2, filed by OneWest lacks prima facie evidence of validity
2 because it provided no evidence of any transfer of debtor's Note and Deed of Trust had been
3 made, the burden of production shifts to OneWest.

4 **IV. LEGAL ARGUMENT**

5 The issue is whether OneWest has met its burden of producing sufficient admissible
6 evidence that it held a perfected security interest in the real property belonging to the Debtor.
7 Based upon the uncontroverted facts set forth above, the Debtor is entitled to summary judgment
8 in his favor for the following reasons:

9 **A. Debtor is Entitled to Summary Judgment Because OneWest has Failed To Put 10 Forth Admissible Evidence That It Held a Perfected Security Interest in Debtor's Real 11 Property, which would render OneWest's Claims Unenforceable Against the Debtor 12 Pursuant to 11 U.S.C. 502(b)(1)**

13 To have an allowed proof of claim, the claimant must prove an initial fact: that it is the
14 creditor to whom the debt is owed or, alternatively, that it is the authorized agent of the creditor,
15 In re Parrish, 326 B.R. 708 (Bankr. N.D. Ohio, 2005). OneWest's Proof of Claims 2, 2-1 and
16 2-2 all state that the Creditor is OneWest Bank, FSB. Therefore, it must establish, by admissible
17 evidence that it has a perfected security interest in the real property belonging to the Debtor.
18 However, by its own record and Admissions, OneWest contrarily asserts that it is not the owner
19 of a debt owed by the Debtor, but rather is the loan servicer acting on behalf of Fannie Mae,
20 whom it claims to be the owner of the Note in question.

21 Further, each of the claims filed in this case have been signed by alleged third party
22 "authorized agents" of purported creditor OneWest without any evidence to support this agency
23 relationship. Michael B. Shaw, Nickolaus A. McLemore, and Paul Cervenka upon information
24 and belief are employed by the law firm of Brice, Vander Linden & Wernick, PC as attorneys.
25 No power of attorney authorization has been provided, which renders each of OneWest's claims
26 void.

27 **B. Real Party in Interest Must Be Named**

28 Rule 17(a) of the Federal Rules of Civil Procedure provides that every action "shall be
prosecuted in the name of the real party in interest." A creditor is a person, corporation, or other

1 entity to whom a debtor owes a debt that was incurred before the date of the bankruptcy filing.
2 See 11 U.S.C. §101 (10). The Debtor does not owe a debt to OneWest, but rather to Fannie Mae.
3 Thus, OneWest is not the proper Creditor in this case. In re Jacobson, 2009 WL 567188 (Bankr
4 W.D. Wash) provided that a servicer of a deed of trust was not a real party in interest and lacked
5 standing to move for relief from stay; In re Sheridan, Bankr. Idaho 2009312, MERS [Mortgage
6 Electronic Registration Systems, Inc.] failed to establish it was the real party in interest where it
7 acknowledged holder of note; affidavit of counsel lacked showing of personal knowledge
8 sufficient to establish foundation to support contention that new note was the “note.”

9 Standing considerations involve both “constitutional limitations on federal court
10 jurisdiction and prudential limitations on its exercise.” Warth v. Seldin, 422 U.S. 490, 498
11 (1975). Constitutional standing concerns whether a claimant’s stake in a matter is sufficient to
12 create a “case or controversy” to which the federal judicial power under Article III of the
13 Constitution may extend. *Id.* at 498-99; Pershing Park Villas Homeowners Assoc. v. Unified
14 Pac. Ins. Co., 219 F.3d 895, 899 (9th Cir. 2000); Lujan v. Defenders of Wildlife, 504 U.S. 555,
15 559-60 (1992).

16 In analyzing prudential standing requirements, the Supreme Court has held:
17 “[T]he plaintiff generally must assert his own legal rights and interests, and cannot rest his claim
18 to relief on the legal rights or interests of third parties.” Warth v. Seldin, 422 U.S. [at 499].

19 OneWest has no legal rights or interests in this case and appears to be acting on behalf of
20 another entity who has not joined in this action, consented to it, nor provided any admissible
21 evidence to support its positions. OneWest has presented no admissible evidence to support they
22 are a party in interest, the real party in interest, nor authority on behalf of any real party in
23 interest in this instant case.

24 **C. Admissibility of Evidence**

25 American Express v. Vee Vinhnee, 336 B.R. 437, 9th Cir.BAP (Cal.), 2005 required a
26 foundation to get electronic records into evidence; Federal Rule of Evidence [FRE] 901 requires
27 authentication or identification of evidence as a condition precedent to its admissibility. FRE
28 901(b)(4) provides, “[a]pppearance, contents, substance, internal patterns or other distinctive

1 characteristics and the like, are taken in conjunction with circumstances.” Here, OneWest has
2 put forth not less than four (4) variations of a Note, one bearing an endorsement stamp that also
3 appears on an Allonge; they have caused to be recorded two (2) assignments of deed of trust
4 papers, at a time when the original lender had ceased to exist as a legal entity. The documents
5 put forth by OneWest are questionable, if not outright fabricated.

6 Debtor asserts that pursuant to FRE 105 that the evidence put forth by OneWest be
7 admitted solely for the purpose of impeaching the declarations of Victoria Elaine Frausto and
8 Suchan Murray, FRE 601, 602. In example, OneWest Admits, via Suchan Murray’s verified
9 response [Exhibit “1”] that the Note in question was endorsed at some time after 11/25/2011,
10 which is legally impossible since IndyMac was taken over by the FDIC in 2009 and did not exist
11 as an entity. In re Vargas, 396 B.R. 11 (Bankr. C.D. Cal, 2008) excluded testimony from a low
12 level clerk of servicing agent and found they were not competent to establish any facts
13 concerning a motion for relief from stay; other attachments were found to be hearsay and
14 inadmissible.

15 In re Hwang, 396 BR 757 (Bankr C D Cal 2008) provided that a loan servicer as agent or
16 nominee of holder of note, may seek relief from stay only if note holder joins or ratifies motion;
17 In re Jacobson, 2009 WL 567188 (Bankr W.D. Wash) found that the servicer of deed of trust was
18 not a ‘real party in interest’ and lacked standing to move for relief from stay. In this case, we
19 have a loan servicer who is likely acting on behalf of the owner, Fannie Mae where they have not
20 joined or ratified OneWest’s actions.

21 OneWest has confused the record with multiple claims filed under penalty of perjury by
22 alleged authorized agents that each subsequent claim is true and correct; a declaration of an
23 employee of OneWest asserting that the first version of its claim is true and correct; and verified
24 answers provided by yet another employee of OneWest making statements that contradict other
25 testimony on the record. Based upon the uncontroverted facts and contradictory evidence put
26 forth by OneWest, summary judgment for the Debtor should be granted.

1 **D. Even If OneWest Could Put Forth Admissible Evidence Of Its Claim, Their**
2 **Claim Is Still Insufficient Because OneWest Fell Short of Proving The Amount Of Its**
3 **Claim.**

4 A. FRE 901 requires the authentication and identification as a condition precedent to
5 admissibility of evidence.

6 The declaration of Victoria Elaine Frausto purports to establish certain invoices as
7 evidence of the amount of OneWest's arrearage claim. [See Frausto Declaration at paragraph 14,
8 page 8] Ms. Frausto attaches said invoices as exhibits 6, 7, 8A, 8B, 8C, 8D, 8E, 9, 10, and 11
9 respectively. However, the invoices appear to be from various third parties and do not establish
10 conclusive proof of payment for alleged services or whether such services were even performed.

11 The invoices attached to OneWest's opposition constitute Hearsay under FRE 801
12 because they are out of court statements made by alleged third party declarants, not made by Ms.
13 Frausto herself asserting to prove the arrearage amount stated by OneWest. As such, the invoices
14 themselves are inadmissible to establish OneWest's arrearage claim.

15 The invoices, attached as exhibits to OneWest's Opposition Motion themselves all appear
16 to have similar headings with the various vendor names listed; each of them has substantially the
17 same formatting though they allege to be from various third party vendors having separate
18 identities and branding.

19 Strangely, the invoice allegedly from LPS Field Services, Inc. dated 10/11/2010 located
20 at Exhibit "9" of OneWest's Opposition at page 52 shows a notation at the foot of the invoice,
21 which states, "Execution date time: 06/20/2012 03:51:52 PM."

22 The invoice allegedly from Hansen Quality dated 07/15/2009 located at Exhibit "10" of
23 OneWest's Opposition at page 61 shows a notation at the foot of the invoice, which states,
24 "Execution date time: 06/20/2012 03:56:55 PM."

25 The invoice allegedly from Hansen Quality dated 07/03/2011 located at Exhibit "10" of
26 OneWest's Opposition at page 63 shows a notation at the foot of the invoice, which states,
27 "Execution date time: 06/20/2012 03:57:48 PM."

28 The invoice allegedly from LPS Field Services, Inc. dated 03/07/2011 located at Exhibit
"9" of OneWest's Opposition at page 57 shows a notation at the foot of the invoice, which states,

1 "Execution date time: 06/20/2012 04:10:51 PM." These notations appear on invoices purporting
2 to be from two different vendors without explanation.

3 Ms. Frausto declares to have produced a true and correct copy of the accrued late charges
4 as Exhibit "6" to OneWest's Opposition to Debtor's Motion to Disallow its proof of claim(s).
5 However, the sheet produced appears to be a spreadsheet without any foundation to support that
6 the information contained therein is accurate.

7 Ms. Frausto's declaration, paragraph 15, page 9 states, "the payoff statement fee of
8 \$30.00 was inadvertently added to the claim." Thus, by OneWest's own Admissions, the amount
9 of the claim was incorrectly stated.

10 The copy of the LPS Field Services, Inc. ["LPS"] Invoice [OneWest Opposition Motion
11 at Ex. 9, page 51] shows in the lower, left portion of this invoice, "Invoice Level Exceptions
12 Possible Duplicate Invoice." Not only are the invoice exhibits questionable due to their looking
13 substantially identical, this particular invoice indicates a possible duplicate charge without
14 explanation. Another LPS invoice [OneWest Opposition Motion at Ex. 9, page 53] shows in the
15 lower, left portion of this invoice, "Invoice Level Exceptions Possible Duplicate Invoice,
16 Multiple Inspections." The invoices [OneWest Opposition Motion at Ex. 9, page 55, 56] also
17 indicates "possible duplicate invoice."

18 The invoice from eMortgage Logic, LLC [OneWest Opposition Motion at Ex. 10, page
19 62] is dated 07/04/2011, which is a federal holiday, a time when most companies would be
20 closed, which only raises the level of suspicion as to the genuineness of the evidence.

21 The documents provided are incomplete and Hearsay because no foundation was made.
22 OneWest failed to provide evidence as to authenticity of the evidence.

23 CONCLUSION

24 For each of the reasons set forth above, Debtor respectfully requests that the Court grant
25 his Motion For Summary Judgment as to his claims against OneWest Bank, FSB.

1 Dated: February 7, 2013

Christine A. Wilton
Law Office of Christine A. Wilton

By: /s/Christine A. Wilton
Christine A. Wilton
Counsel for Stephen Myles Aldridge

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