

possessed nor held or holds title to, nor has it ever held any lawful rights of any kind over the real property itself; but only by the sole transaction of a September 25, 2019 trustee sale event does it bring its disputed and claim against homeowner defendant.

Defendant's answer to the complaint rests on the basis that the September 25, 2019 trustee sale event was void by operation of law and thereby Breckenridge took no lawful rights because "no rights can arise from a wrong." Defendant has standing to make counterclaims for actionable offenses and injury including but not limited to wrongful foreclosure, material violations of several of the California Homeowners' Bill of Rights set of statutes in which plaintiff makes itself a co-conspirator for unjust enrichment and a counter-defendant alongside other entities who appear to have committed the material violations against defendant-homeowner leading directly to the aforementioned trustee sale.

Breckenridge, whose agent was apprised and forewarned by clear and witnessed public announcement at the same September 25, 2019 trustee sale event but bid anyway on the subject property steeped in litigious controversy, has made itself a plaintiff only because that bidding completed on a void transaction by operation of law, i.e. the trustee sale event itself is void under governing law.

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Pending counterclaims in suit for resulting injury and damages by defendant will evidence meritorious grounds for an actionable offenses, to be set for hearing before a court of competent and proper jurisdiction. The instant Answer comprises affirmative defenses and is filed concurrently with defendant's motion for reclassification to the proper jurisdiction for due process on the actual controversy over title and possession of the subject property, in which governing law includes California's Homeowners' Bill of Rights (or "CalHBOR") which appear to include but are not limited to CA Civ Pro Code § 2924.11(b)(2), 2924.17, 2923.5 and 2924.12(b). It appears and when appropriate defendant and homeowner will plead and support claims for material violations of the above-cited sections 2924.17 and 2923.5, both being provisions under CalHBOR; however the premise in Answer asks the court to focus on the most recent and most unambiguously clear material violation of one of California's homeowner protection provisions is section 2924.11(b)(2), i.e.: that an alternative to foreclosure clearly existed in this instant matter, was acknowledged at length and then agreed to by written contract between ALL interested parties, then was egregiously breached when adverse parties against homeowner took the home to trustee sale instead of binding itself to its own written contract, nor fulfilling its recognized mandate under CalHBOR to settle on the alternative to dispossession of home and unjust unlawful stripping of the homeowner's half-a-million dollars or so in equity.

CA Civ Pro Code § 2924.11(b)(2)

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Most recently between about September 12 and September 25, 2019 to be evidenced by supporting exhibits, testimony and affidavit in a regular civil unlimited jurisdiction court, defendant and counterclaimant herein states that certain mortgage-servicer and substitute trustee entities bound by the CalHBOR mandates nevertheless violated this provision found in CalHBOR regarding the law protecting California homeowners that all viable, reasonable and achievable "alternatives to foreclosure" be sought and completed before dispossession of the home from the homeowner.

In this case (and which will be evidenced and exhibited in detail in a regular civil unlimited jurisdiction case), homeowner and defendant timely in the weeks prior to the trustee sale, and with proof of funds in writing exercised her right to tender full payoff (not "reinstatement" nor "loan modification" but FULL PAYOFF of the entire claimed amount presented by the mortgage-servicer company in their September 2019 monthly statement backed by their attorney's email), following agreement in writing (email) between ALL interested parties that the full payoff amount would be accepted (as alternative to foreclosure trustee sale.)

But, upon breach of the written contract, and obstruction of homeowner's right to tender full

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payoff (her right of 'equitable redemption') and in deliberate rejection of homeowner's title-escrow officer's repeated efforts to obtain wire-transfer bank account information to wire the full-payoff funds, the mortgage-servicer company by way of its attorneys, apparently instructed and/or co-conspired with the substituted trustee entity who apparently instructed the auctioneer to instead call the subject property at the foreclosure auction on September 25, 2019.

Breckenridge, plaintiff, had an agent-employee present at the same trustee sale who repeatedly heard homeowner and defendant/counterclaimant make clear public announcement that "Nationstar and Aztec" (mortgage-servicer and substitute trustee entity names, respectfully) have knowingly and in writing rejected my tender of FULL PAYOFF - NOT REINSTATEMENT - BUT FULL PAYOFF of the entire claim, and instead are instructing the auctioneer to call the property.

... I have emails between their attorney, my loan broker and my escrow officer that we've been waiting three days for wiring instructions to Nationstar or their attorneys' bank account - but they've gone completely silent for over ten days ... Knowing I had and proved proof of funds ... so anyone who bids today you're forewarned you will be sued, you will be subject to a long litigious controversy by bidding on my house of 54 years continually in my family with

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almost six years of dispute resolution and legal conflict ... Now Nationstar's attorneys are violating California Homeowner Bill of Rights - I have the right to tender full payoff - and I have over half a million dollars in equity even if I have to sell my house to payoff my hard money lenders to make this tender of FULL PAYOFF - that's my family's equity, not anyone else's ..."

Breckenridge's agent bid on the home anyway despite being made aware of all the foregoing public announcements at the trustee sale, so plaintiff did not take an interest in the property free from controversy; nor did plaintiff do a shred of due diligence to perhaps duly explore whether the announcement was true, which would make the trustee sale void. One other bidder even chimed in that "They" [Breckenridge] would have to demand their money back if the sale is void today .."

It also appears that the plaintiff has attempted an insurmountable leap over a legally impossible impasse, apparently built into California's nonjudicial foreclosure legal procedure for trustee sales: Breckenridge as apparent co-conspirator or at least attempted co-beneficiary in the face of CalHBOR violations committed

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by these other entities, has nevertheless laid claim only an unvalidated and unproven lien interest allegedly secured by the real property, and as the buyer of an unproven lien interest only can make no claim whatsoever to title ownership nor lawful possession to the real property itself. CA Civ Pro Code § 2924(f)(b)(8)(A), being a Notice to Bidders disclaimer written on every California public notice of trustee sale on the subject property' notice as well:

CA Civ Pro Code § 2924(f)(b)(8)(A): "(8) (A) On and after April 1, 2012, if the deed of trust or mortgage containing a power of sale is secured by real property containing from one to four single-family residences, the notice of sale shall contain substantially the following language, in addition to the language required pursuant to paragraphs (1) to (7), inclusive: NOTICE TO POTENTIAL BIDDERS: If you are considering bidding on this property lien, you should understand that there are risks involved in bidding at a trustee auction. You will be bidding on alien, not on the property itself. Placing the highest bid at a trustee auction does not automatically entitle you to free and clear ownership of the property. ..."

This homeowner, weeks prior to trustee sale, entered written contract to tender full payoff to the mortgage-servicer by way of its attorneys; and this was not a "reinstatement" of the loan nor a loan modification with that servicer. By so agreeing to tender full payoff, she was not conceding that Nationstar, the mortgage servicer, nor its attorneys, agents or assigns had proven it was "owed the debt" or "entitled to payment" but that homeowner made a strategic decision to "pay the ransom" as she candidly called it to her adverse claimants, thus ending the stressful protracted litigation necessary in defense of home and equity in real property, in the face of nonjudicial foreclosure protocols that would carry on absent judicial scrutiny or application of protective governing law

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(a nonjudicial foreclosure procedure is in place in California). Or put another way, if homeowner and long self-represented litigant aimed at preserving home and equity, wished to end litigation in total, she concluded she would most expediently do so by paying the "ransom" of tender of full payoff to the unproven mortgage-servicing agent who admitted it was not the "owner of the debt," but was collecting for that entity.

Homeowner proved in writing, evidence to be exhibited in a regular civil unlimited case, that the funds were waiting in escrow ready to wire transfer days before the trustee sale event, and specific instructions were requested to make that wire transfer by the escrow officer 24 hours or so before the trustee sale event, emailed to attorneys who received all of the above proofs pursuant to statute, 2924.11(b)(2).

Rejection of those funds was deliberate and done knowingly by servicer and its attorneys, admittedly so by email from attorney for Nationstar. Rejection of those funds in the face of written contract breach and timely proof in writing constitutes a material breach of CalHBOR (specifically and not limited to CalHBOR section 2924.11(b)(2); therefore the same CalHBOR under 2924.12(b) suggests that a court of law (a regular civil unlimited case) "may award treble actual damages to the homeowner" for a "willful, negligent and/or reckless material violation of" any of the CalHBOR mandates including 2924.11(b)(2).

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The above several paragraphs describe the complex level of controversy over title ownership, lawful possession, right to possession and breach of contract alongside a specific and substantially large damages award claim legislated by our state legislature (treble the equity in the property which the homeowner risks losing) in 2924.12(b) upon the filing of a trustees deed upon sale following such breach, as in the instant case (*Vella v. Hudgins, supra*)

All these together should convince the court that we have a complex civil matter outside and above the limited jurisdiction of unlawful detainer and clearly regarding a matter in controversy that is the lien against and the value of subject real property, whose value far and above exceeds statutory limit of \$25,000j.

**ANSWER PLED WITH MOTION TO RECLASSIFY
TO REGULAR CIVIL UNLIMITED CASE**

Defendant Renee Yamagishi answers the instant complaint below and has moved to reclassify the case into its proper classification as a regular, unlimited jurisdiction civil action, because the matter in controversy is not supported by statute as a mere unlawful detainer action which is a limited civil action that cannot and does not hear her specific counterclaims as a homeowner/occupant together

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 and with her parents for 55 continual years for the subject property and its lien-claim in controversy worth much more than \$25,000; and who lawfully defends by affirmative counterclaim, based on violations including but not limited to, of California Homeowner Bill of Rights and a for wrongful foreclosure which cites to various binding California case law and statute.

The present action is misclassified under Code of Civil Procedure Section 85 and Section 86 as a limited jurisdiction, unlawful detainer action. The present controversy and therefore the instant action should be properly reclassified as a regular civil unlimited jurisdiction matter. Therefore defendant concurrently files her motion for reclassification based on the following (bold, caps, or italics emphasis added):

CA Civ Pro Code § 85

An action or special proceeding shall be treated as a limited civil case if ***ALL*** of the following conditions are satisfied, and, notwithstanding any statute that classifies an action or special proceeding as a limited civil case, ***an action or special proceeding shall not be treated as a limited civil case unless ALL of the following conditions are satisfied:***

(a) The amount in controversy does not exceed twenty-five thousand dollars (\$25,000).
 As used in this section, "amount in controversy" means the amount of the demand, or the recovery sought, ***or the value of the property, or the amount of the lien, that is in controversy in the action,*** exclusive of attorneys' fees, interest, and costs.

(c) The relief sought, whether in the complaint, a cross-complaint, or otherwise, is exclusively of a type described in one or more statutes that classify an action or special proceeding as a limited civil case or that provide that an action or special proceeding is within the original jurisdiction of the municipal court, including, but not limited to, the following provisions:

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(4) Section 86.

CA Civ Pro Code § 86

(a) The following civil cases and proceedings are limited civil cases:

(1) A case at law in which the demand, exclusive of interest, or the value of the property in controversy amounts to twenty-five thousand dollars (\$25,000) or less. ...

(3) An action to cancel or rescind a contract when the relief is sought in connection with an action to recover money not exceeding twenty-five thousand dollars (\$25,000) or property of a value not exceeding twenty-five thousand dollars (\$25,000), paid or delivered under, or in consideration of, the contract; an action to revise a contract where the relief is sought in an action upon the contract if the action otherwise is a limited civil case.

(4) A proceeding in forcible entry or forcible or unlawful detainer where the whole amount of damages claimed is twenty-five thousand dollars (\$25,000) or less.

(5) An action to enforce and foreclose a lien on personal property where the amount of the lien is twenty-five thousand dollars (\$25,000) or less.

(6) ... [However,] if an action to enforce the lien affects property that is also affected by a similar pending action that is not a limited civil case, *or if the total amount of liens sought to be foreclosed against the same property aggregates an amount in excess of twenty-five thousand dollars (\$25,000), the action is not a limited civil case. ...*

AFFIRMATIVE DEFENSES TO COMPLAINT

Renee Shizue Yamagishi (aka Ramos), defendant, responds to the numbered allegations of the Plaintiff's Complaint, filed February 4, 2019. as follows, following the below main and central affirmative defense:

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Defendant Homeowner's lawful right to tender full payoff (not reinstate nor modify the loan) was denied and obstructed by parties who then unlawfully presided of the September 25, 2019 trustee sale in which plaintiff placed their bid (Civil Code Section 2924.11(b)(2), following violations of the same CalHBOR 2924.17 and 2923.5 never consented to but willingly overlooked by strategic concession of homeowner (paying "ransom) per email and phone disclosure in the months prior to trustee sale: written contract for a duly-recognized "alternative to foreclosure" was in progress when the contract was willfully breached by adverse parties.

With reference specifically to the "written proof of funds" in Section 2924.11(b)(2) along with written agreement between all the parties that full payoff funds were to be posted as the cure to the controversy, governing law pursuant to CalHBOR's mandate and a right to equitable redemption by tendering FULL PAYOFF required immediate cancellation of the trustee sale upon the written proofs duly and timely produced and performed by defendant.

The September 25, 2019 trustee sale was void by operation of law because responsible parties mandated under CalHBOR and under 2924.11(b)(2) and 2924.12(b) specifically FAILED TO CANCEL THE FORECLOSURE SALE AS REQUIRED BY LAW. Thus instead of cooperating with homeowner who was ending litigation entirely by curing the

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controversy and paying dearly to do it (ransom by private outside funders); adverse entities prolong litigation! It is clearly not a summary proceeding matter but complex civil litigation is now pending by counterclaim made by defendant and by her motion to reclassify the case to a proper regular civil unlimited case with jurisdiction to try complex matters. **"No rights can arise from a wrong."** -- Maxim of Law.

Furthermore, plaintiff does not own nor have then taken title or right to lawful possession of the subject real property because the substituted trustee acted without lawful authority from any entity proven as the injured party to whom defendant-homeowner owes money: nor did any owner of the debt obligation or obligor on the note or injured-party with standing as "entitled to payment or to foreclose on the real property" appear to have instructed or authorized the trustee sale conducted by the substituted trustee. Binding case law on standing to foreclose is Supreme Court of California in *Yvanova v. New Century Mortgage Corp.*, (62 Cal.4th 919 (2016)).

This substituted trustee's interest and designated authority is subject to dispute and hereby disputed, and has never been duly adjudicated nor decided prior, and a burden of proof has never been met by this entity that it acted under the authority of the alleged "beneficiary" known as the "assignee" on the deed of trust, one Wilmington Trust National Association and/or its parent company M&T

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Bank in its capacity as successor trustee of the Merrill Lynch Mortgage Investors Trust, Series 2006 HE-5, and therefore any lawful and true "interest" on the referenced "deed of trust" conveyed to plaintiff is only as good as the interest held by the entity who conveys it: *"Nemo Dat Quod Non Habet."*

PARAGRAPH THREE: Denies the conclusory allegation that Plaintiff is entitled to possession of the specified parcel of real property. Denies the conclusory allegation that Plaintiff is the owner of record of said parcel of real property. Admits that the referenced parcel of real property is located in Alameda County within the jurisdiction of the Superior Court of California, County of Alameda. Denies that the subject real property is properly within the jurisdiction of the Berkeley, California branch of the Superior Court for purposes of a regular, unlimited civil action, to which Defendant Renee Yamagishi contends the present action must be reclassified.

PARAGRAPH FOUR: Admits that Defendant Renee Yamagishi is in possession of the subject real property. Denies that any unknown persons not identified in the Complaint are in possession of the subject real property "trustor."

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PARAGRAPH THREE: Denies Plaintiffs conclusory allegations that Plaintiff is owner of and entitled to possession of the subject real property. Admits that the subject real property is located in Alameda, California. Denies that the subject real property is properly within the jurisdiction of the Berkeley, California branch of the Superior Court for purposes of a regular, unlimited civil action, to which Defendant Renee Yamagishi contends the present action must be reclassified.

PARAGRAPH FIVE: Denies Plaintiffs conclusory allegation that she "defaulted" on any contract because the injured party to the contract failed to appear when duly summoned into a court of law to make presentment and declare default by law. An agent or attorney for an alleged injured party is hearsay absent written proof of agency relationship which remains wanting. Furthermore notice of default was properly given in accordance with California Code of Civil Procedure 2924 or 2923.5 under California Homeowner Bill of Rights. The active Notice of Default appears to contain a perjured Declaration Page subject to preliminary injunction awarded in 2018 and subject to further discovery, evidence and adjudication.

PARAGRAPH SIX: Denies Plaintiffs conclusory allegation that she "failed to cure the default." See above narrative and testimony pled as to the deliberate obstruction of homeowner's right to tender full

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payoff constituting breach and material violations of law; and making the trustee sale itself void by operation of law.

PARAGRAPH SEVEN Only an unproven unvalidated (as of yet) "lien interest" was sold at the trustee sale event (which itself was conducted in material violation of law(s)), and plaintiff thereby did not buy the real property itself, **Civil Code section 2924(f)(b)(8)(A), supra.**

PARAGRAPH TWELVE: Defendant admits that she did not turn over possession of her home, the subject real property to Plaintiff upon Plaintiff's unlawful demand referred to in Paragraph Twelve above. Plaintiff denies that Code of Civil Procedure section 116 la required her to turn over possession of her home to Plaintiff, who has never owned or had lawful possession of said real property, nor did plaintiff take lawful ownership as a result of the void trustee sale as pled.

Admits that Defendant Renee Yamagishi is still in possession of her home and is lawful in retaining her possession pending adjudication of the facts and hearing of her counterclaims demanded by the evidence, facts, and governing law; and to be heard in a regular civil unlimited jurisdiction case which has NEVER completed regarding plaintiff's current demands. Denies that occupancy of her home requires Plaintiff's permission or consent.

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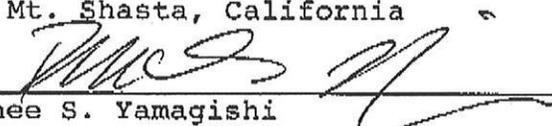
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PARAGRAPH THIRTEEN: Denies that Defendant Renee Yamagishi is unlawfully occupying her home or that Plaintiff has accrued or will accrue any damages on account of her lawful occupancy of her home. Denies Plaintiffs claim of "reasonable value of the use and occupancy" of Defendant's home as unproven and irrelevant.

In conclusion, the main affirmative defense has been stated that a homeowner's right to tender full payoff was deliberately rejected and obstructed, constituting violation of governing law pursuant to CalHBOR's mandate and a right to equitable redemption by tendering FULL PAYOFF required cancellation of the trustee sale upon the written proofs duly and timely produced and performed by defendant.

Dated January 6, 2020

At Mt. Shasta, California



Renee S. Yamagishi

Defendant Pro Per and Sui Juris,

One of the people of California and executor of the estate of

RENEE SHIZUE YAMAGISHI

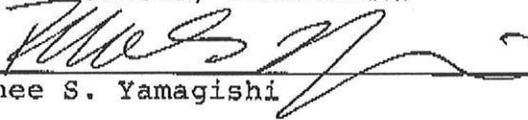
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VERIFICATION

I, RENEE SHIZUE YAMAGISHI aka RENEE SHIZUE RAMOS am the defendant in the instant action. I have read and understand the Answer to the complaint and approve of its content; and can verify this statement under penalty of perjury under the law of the state of California.

Dated January 6, 2020

At Mt. Shasta, California



Renee S. Yamagishi

Defendant Pro Per and Sui Juris,

One of the people of California and executor of the estate of RENEE SHIZUE YAMAGISHI

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