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Plaintiff Sui Juris and Pro Per

4 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
5 **IN AND FOR THE COUNTY OF ALAMEDA**

6
7 RENE SHIZUE YAMAGISHI
aka RENE SHIZUE RAMOS

8 Plaintiff in Pro Per / Real Party Sui Juris;

9
10 vs.

11 NATIONSTAR MORTGAGE LLC dba MR. COOPER;
12 AZTEC FORECLOSURE CORPORATION;
13 WILMINGTON TRUST NATIONAL ASSOCIATION;
14 WILMINGTON TRUST NATIONAL ASSOCIATION,
AS SUCCESSOR TRUSTEE TO CITIBANK, N.A.,
15 AS TRUSTEE FOR MERRILL LYNCH MORTGAGE
INVESTORS TRUST, MORTGAGE LOAN ASSET-
16 BACKED CERTIFICATES, SERIES 2006-HE5;
M&T BANK;

17 AND DOES 1-100;

18 Defendants.
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) CASE NO: RG-190158073

) MANDATORY SETTLEMENT
) CONFERENCE STATEMENT OF
) RENE SHIZUE YAMAGISHI,
) Plaintiff in Pro Per, Sui Juris

)
)
) DEPT. 303
) HON. JUDGE AND COMMISSIONER
) THOMAS RASCH
) DATE: JUNE 7, 2019
) TIME: 9:00 AM

)
)
) ASSIGNED TO DEPT. 22
) HON. JUDGE MCGUINNESS

20
21 **I. PARTIES AND COUNSEL**

22 a. Plaintiff in Pro Per is RENE SHIZUE YAMAGISHI formerly known as
23 RENE SHIZUE RAMOS, appearing Sui Juris.

24 b. Defendants represented by Amanda H. Hamilton, attorney at Reed Smith
25 LLP, San Francisco, CA are:

26
27 i. NATIONSTAR MORTGAGE LLC DBA MR. COOPER;
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- 1 ii. WILMINGTON TRUST NATIONAL ASSOCIATION;
- 2 iii. WILMINGTON TRUST NATIONAL ASSOCIATION, AS SUCCESSOR
- 3 TRUSTEE TO CITIBANK, N.A., AS TRUSTEE FOR MERRILL LYNCH
- 4 MORTGAGE INVESTORS TRUST, MORTGAGE LOAN ASSET-BACKED
- 5 CERTIFICATES, SERIES 2006-HE5; and
- 6 iv. M&T BANK.

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8 c. Defendant AZTEC FORECLOSURE CORPORATION's counsel of record is Angie Marth
9 and Darlene Hernandez of Shapiro, VanEss, Sherman & Marth, LLP (SVESM Law), Costa
10 Mesa, CA.

11 **II. CASE STATEMENT**

12 Plaintiff is the sole "note-maker" of a promissory note to secure a residential loan to refinance real property.
13 The note was entered by her signature on June 26, 2006 opposite one Aegis Lending Corporation. About
14 November 2008 after her and her husband at the time experienced a swift prevalence of financial hardship
15 in the wake of the global financial crisis, they applied to modify their adjustable rate loan to a fixed rate
16 loan. Their prior business plan was to complete the almost total major renovation of the dilapidated 100
17 year old house with their interest only loan guaranteed for 3 years; and refinance prior to the 3 years to a
18 fixed rate once the completed remodel and repair would appraise at a higher market value. However 2 1/2
19 years into the loan when Plaintiff's self-employment business showed steady decline making only 35-40%
20 its normal income compared to the start of 2008, and after her husband's workplace injury resulted in
21 stalled disability checks from the local utility company program, they were encouraged by President
22 Obama's MHA and HAMP loan modification PSA's and applied online with their mortgage-servicer
23 Wilshire Credit Corporation, a subsidiary of Bank of America Corporation for a modified loan. Plaintiff
24 hired a loan auditor with its "package deal" of providing a bar attorney to help with letters and advocacy to
25 best ensure her family's security of obtaining a non-predatory fixed rate new modified loan with their
26 servicer Wilshire. Plaintiff and her husband did not request any principle reduction, just a lower payment
27 and forbearance so as not to "default" and of course obtain the secure fixed rate loan. Plaintiff made
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1 loanmod application one month prior to ever missing any payment. She was told by Wilshire that they
2 would evaluate her paperwork while her payments were suspended during the application process.
3 Instead Wilshire did nothing, zero processing nor response for over one year.

4 Distraught but insistent, she persisted on sending and resending loan modification applications
5 while upgrading her healing practice skills (neuromuscular therapist / stress reduction somatic practice) by
6 enrolling in a life-coaching certification program to attract more clients; while waiting for loan mod
7 approval. Plaintiff's husband contributed \$3500/month in cash from his paycheck for her to manage
8 household expenses which included the mortgage, which was just under \$2,000. Plaintiff was able to
9 afford more for a fixed rate loan which would begin to pay down principle. Wilshire did nothing and
10 finally service transferred to Bank of America Corporation servicing entity.

11 BAC Home Loan Servicing LP, then Office of the CEO & President of BofA, then BofA, N.A. all
12 processed and denied four loan modification applications DESPITE PROOF OF HER ABILITY TO
13 AFFORD A REASONABLE AND EVEN HIGHER PAYMENT than the interest-only payment. PLAINTIFF
14 WAS INDEED FINANCIALLY ELIGIBLE and the denials were wrongful and in violation of HAMP and
15 MHA and federal guidelines. The details of these four "Loan Mod Debacles & Denials" are documented
16 with exhibits in Plaintiff's "Proposed Second Amended Complaint" docketed and filed on December 23,
17 2014. All this was devastating and caused Plaintiff to eventually have to quit her business form the stress
18 and health issues she suffered. She had to learn how to defend the family home.

19 She also worked as owner-builder manager and renovated the back section of the house, a two
20 story addition her parents added on in the 1970s (this is family home since 1965 continually); to create stable
21 rental income in a high demand rental market. She lived in the front main house, then when her children
22 left the house for college and high school out of state, she rented out the main house to maximize stable
23 rental income for BofA servicers to have no doubt of her capacity to pay; and she rented a small one room
24 studio to manage the proof of income. Still unjustly and unlawfully denied – egregiously bait & switched.
25 She began to seek psychiatric and counseling support, but continued to work with servicing and learn the
26 law.
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1 Bank of America, N.A. transferred servicing to Nationstar Mortgage LLC July 31, 2013. Within 60
2 days of servicing by Nationstar, they answered Plaintiff's Qualified Written Request. Please see the
3 AUXILIARY DOCUMENTS submitted with this Statement, specifically the November 13, letter asking
4 Nationstar to explain and correct its three contradictions of who owned the loan, written in less than a 30
5 day period, which all also contradicted the 2013 Assignment of Deed of Trust. Never answered to date.

6 Plaintiff then formally put Nationstar on notice that she could not in good conscience apply for any
7 contract such as loan modification with the likes of the company, and saddle her children with such lawless
8 ambiguity committed in writing by an agent for the owner of her loan; and she demanded to have an
9 audience directly with their principle, the owner of her note and loan. Nationstar refused to acknowledge
10 her request nor provide any proof of agency relationship when requested. Instead about April 2014
11 Defendants Nationstar and Aztec filed public records such as Notice of Default and Notice of Trustee Sale
12 absent any good faith negotiation whatsoever.

13 Plaintiff then was studying the law and her rights full time, semi-homeless living with friends since
14 the City of Berkeley has rent-board laws in which her tenants would have to voluntarily vacate the home
15 even if she the owner wished to return to it. This was a most trying time. She filed her first Quiet Title
16 Action April 15, 2014 which was intended to SUMMONS INTO THE COURTROOM THE OWNER OF
17 HER LOAN AND DEBT SO SHE COULD CURE HER DEBILITATING CONDITION BY SETTLING
18 DIRECLTY WITH THE INJURED PARTY instead of being attacked incessantly with threats of
19 "foreclosure" by Nationstar and Aztec who had absolutely no process or protocol to attempt any reasonable
20 workout solution and even told her that "loan modification is not an option when homeowner declines it,"
21 and that the ONLY other option was trustee sale and losing the home.

22 Plaintiff, to date has managed to put forth her transparent position, pleading and stating and
23 evidencing ALL of her attempts at good faith cure to the controversy – publicly and in a court of law. The
24 instant statement is for the purpose of exploring good faith SETTLEMENT, not to plead her entire history
25 or legal position, therefore please reference the accompanying AUXILIARY DOCUMENTS bound for
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1 reference to substantiate and further validate her position stated herein below, for the purpose of
2 evaluating good faith Settlement.

3
4 III THE CONTROVERSY NEEDS "TRANSLATION" ASSISTANCE FROM THE COURT BETWEEN
5 TWO BODIES OF LAW

- 6 a. Plaintiff speaks, pleads and stands on her rights as a "note-maker" under the body of law
7 governing her note, i.e. Negotiable Instrument Law: Uniform Commercial Code UCC Article 3,
8 adopted in 1917 in California as the California Commercial Code COMM Division 3.
9
10 b. Defendants apparently know only the language of Civil Code Section 2924.
11
12 c. Between the two bodies of law certain KEYWORDS mean very different things, conditions or
13 events: most notably the words "DEFAULT" (known as "dishonor" in UCC); and
14 "FORECLOSURE" ascribed different meanings between a 2924 trustee sale event; and the
15 centuries-old understanding that "foreclosure" is an event in which NOTE-MAKER AND
16 HOMEOWNER is lawfully and legally divested of and loses title, ownership and eventually
17 possession of her property and dwelling at the conclusion of the event of "foreclosure."
18
19 d. These discrepancies are partly standing in the way of effective negotiation; and parties could be
20 helped by at least and at first acquiescing that two bodies of law that nonetheless use some of
21 her same words should at least be clearly studied so the definitions of Plaintiff and Defendant
22 can be best mutually understood – even if they each disagree on applications of those
23 definitions to the controversy itself. We need help "translating" as a start to any productive
24 settlement talks!

24 IV PLAINTIFF'S LIABILITY (Note: UCC and COMM numbering systems are the same, Plaintiff will use
25 "UCC" heading before the statute numbers)

- 26 a. Plaintiff claims \$0 liability (zero dollars liability), under UCC 3-501 (b)(3).
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- 1 b. Because there has been no UCC 3302 "Person Entitled to Enforce the Note" because it is the
2 Owner of the Note (and "Injured Party") who has NEVER neither APPEARED INTO A COURT
3 OF LAW when duly summoned over years and into multiple cases at law, nor has it ever made
4 UCC 3501 Demand for Payment, known as the "Presentment Event" in which the Note-owner
5 who has thus proven its standing makes demand for payment to the Note-maker (plaintiff); by
6 first declaring Note-maker "in dishonor" of the note (due to non payment) and then making
7 demand to be made whole. Negotiation and settlement then can ensue. Sometimes the note-
8 owner opts to exercise its right to the security and in the case of a loan note thereby "foreclose"
9 against the real property.
- 10 c. Plaintiff declares no such 3501 Presentment Event has yet to occur, and until and unless it does,
11 she is not in dishonor nor "default" on the note. Plaintiff's legal position is that a "condition" of
12 default on the note exists ONLY upon Presentment, governing under 3501 UCC, because her
13 Note is a negotiable instrument.
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15
16 V OFFER OF PLAINTIFF

- 17 a. Plaintiff offers to make formal request to Defendants to schedule the Presentment Event soon,
18 and to hold it before the Commissioner or Presiding Judge or neutral evaluator.
- 19 b. This offer is a concession on the part of Plaintiff because she has recognized and claims her
20 rights under UCC 3-118(b) which is the Statute of Limitations of ten (10) years; which is a valid
21 cause of action she could plead and plead for an order enforcing UCC 3-118(b) against all
22 adverse claimants of her note and its attached deed of trust security instrument; but will refrain
23 from amending her complaint to plead UCC 3-118(b) until after Defendants give a formal
24 response to the Presentment Event request and/or until the Presentment event reaches a
25 conclusion as to establishment of a true dishonor or "default" against her on the Note; and in
26 favor of an ascertainable, Identifiable and intact Person or Institution. YVANOVA V NEW
27 CENTURY MORTGAGE, Cal Supreme, 2016 (Please see AUXILIARY DOCUMENTS).

28 c. Plaintiff made formal offer to settle in writing of \$270K and then
a second higher offer of \$370K; both immediately rejected by National, Feb. 2019.

1 VI DEMAND and DAMAGES

- 2 a. Plaintiff's demand at this time is the same as her Offer: i.e. she makes formal request that
3 Defendants provide timely response to her Request to soon schedule the UCC 3-501
4 Presentment event and to determine with the court and commissioner the date, time, place and
5 officiating neutral evaluator presiding over the presentment.
- 6 b. Damages are itemized below as to category but not to any monetary quantity or amount at this
7 time; also awaiting the Presentment event and conclusions drawn thereof.
- 8 c. Plaintiff contends and evidences, that to date, she has been damaged and injured by TEN
9 YEARS and A HALF of incessantly attempting to protect her home, the family home since 1965
10 entrusted to her, from loss and foreclosure – against parties who have not proven their right to
11 demand payment or to foreclose. Until adverse parties making claim satisfy and meet the fact-
12 intensive burden of proofs required them under the UCC and in conclusion of a UCC3501
13 Presentment Event, Plaintiff is NOT in default, so her 10 years of anguish and loss and injury
14 have been against parties who have not proven they have NOT acted unlawfully, and who have
15 yet to prove they have followed governing law in their incessant attacks to take away her
16 dwelling, her family home, and now her own source of income since loss of her business due to
17 disability caused by her feverish commitment to save the home from foreclosure.
- 18 d. Therefore, as a general rule of law and equity, Plaintiff makes demand of treble the fair market
19 value of her home to date, which is approximately \$1 Million = demand against Defendants = \$3
20 Million.
- 21 e. CATEGORIES FOR DAMAGES CLAIM (not exhaustive list):
- 22 i. Time and effort to study, research, work, administrative support, outreach, collaborate
23 and converse in order to learn the law and how to advocate, write, defend and protect
24 her home from false claims and from losing her home to 2924 foreclosure attacks.
- 25 ii. Payments to law professionals including bar attorneys, paralegal services and products,
26 forensic analysts, document examiners, securitization and chain-of-title consultants.
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- 1 iii. Purchase of study materials, courses, webinars, books, e-books, study guides and
2 presentation events aimed at saving her home.
- 3 iv. Payments for fee for services for Medical and Wellness professionals: Psychiatrists,
4 Psychologies, Somatic Counselors, Life Coaches, Chiropractors, OMD and Licensed
5 Acupuncturists, MDs, Spiritual Counselors and other health and wellness support
6 expenses to maintain functional wellness and health.
- 7 v. Costs of court and suit:
- 8 1. Filing fees (2014, 2015, 2017, 2018 and 2019)
- 9 2. Serving, Mailing, Copying, Scanning, Courier and other administrative tools
10 and supports to produce and handle documents properly
- 11 3. Transportation and delivery, travel, appointments.

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14 VII INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

- 15 a. Duration starts December 2008: Bank of America entities handled adverse actions until July 31,
16 2013; when current named Defendants became servicer and substituted trustee.

17 VIII UNABLE TO PUT A PRICE ON LOSS OF QUALITY OF LIFE AND DEGENERATION OF
18 RELATIONSHIPS DUE TO EXHAUSTION AND NON-AVAILABILITY OF TIME

- 19 a. Plaintiff's two children are now 25 and 30 years old – they were 14 and 18 when this trauma
20 inducing controversy started.
- 21 b. Her marriage ended in 2011, due partly to the stress and the California laws and judicial system
22 – my ex-husband wanted no more to do with the State of California and departed; I chose to
23 finish raising the children here and fight for rights to my childhood home against parties who
24 had never called me to the Presentment event, hence who had not proven any “default’ against
25 any entity even existed – while I sought feverishly to cure any such injury directly with the
26 Injured Party who would simply appear into a court to law when summoned, so it could be
27 made whole.
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1 IX ATTACHMENTS: See please AUXILIARY DOCUMENTS

2 X DECLARATION

3 I declare under penalty of perjury under the laws of the State of California, that the information
4 provided herein is true and correct and accurate to the best of my knowledge. I am aware of the California
5 Rules of Court Rule 3.1380 regarding Mandatory Settlement Conferences.

6
7 Signed:

8 May 31, 2019

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10 _____
11 RENE SHIZUE YAMAGISHI, PLAINTIFF IN PRO PER