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10 **SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA**

11 **RENE C. DAVISON COURTHOUSE**

12 RENE SHIZUE RAMOS, AKA RENE  
13 SHIZUE YAMAGISHI,

14 Plaintiffs,

15 v.

16 WILMINGTON TRUST NATIONAL )  
17 ASSOCIATION, SUCCESSOR TRUSTEE )  
18 TO CITIBANK, N.A., AS TRUSTEE FOR )  
19 MERRILL LYNCH MORTGAGE )  
20 INVESTORS TRUST, MORTGAGE LOAN )  
21 ASSET-BACKED CERTIFICATES, AND )  
22 SERIES 2006-HES, a business entity form )  
23 unknown; NATIONSTAR MORTGAGE )  
24 LLC, dba MR. COOPER, a Texas Limited )  
25 Liability Corporation; AZTEC )  
26 FORECLOSURE COMPANY, INC., a )  
27 California Corporation; BRECKENRIDGE )  
28 PROPERTY FUND 2016, LLC, a Delaware )  
Limited Liability Company; CHAMPERY )  
REAL ESTATE 2015, LLC, a California )  
Limited Liability Company; ALL PERSONS )  
OR ENTITIES UNKNOWN CLAIMING (A) )  
ANY LEGAL OR EQUITABLE RIGHT, )  
TITLE, ESTATE, LIEN, OR INTEREST IN )  
PLAINTIFF'S REAL PROPERTY )

Case No.: 23CV029813

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF EX  
PARTE APPLICATION FOR ISSUANCE  
OF TEMPORARY RESTRAINING  
ORDER AND ORDER TO SHOW CAUSE  
RE PRELIMINARY INJUNCTION**

Judge: Frank Roesch  
Dept: 17  
Date Filed: 03/22/2023

Date: May 15, 2023  
Time: 2:00 p.m.  
Dept. 17

1 DESCRIBED IN THIS VERIFIED )  
2 COMPLAINT ADVERSE TO PLAINTIFF’S )  
3 TITLE, OR (B) ANY CLOUD ON )  
4 PLAINTIFF’S TITLE TO THE REAL )  
5 PROPERTY. THE CLAIMS OF EACH )  
6 UNKNOWN DEFENDANT ARE WITHOUT )  
7 ANY RIGHT, AND THESE DEFENDANTS )  
8 HAVE NO RIGHT, TITLE, ESTATE, LIEN, )  
9 OR INTEREST IN THE PROPERTY and )  
10 DOES 1 through 25, inclusive, )  
11 Defendants. )  
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11 **I.**  
12 **INTRODUCTION**

14 This application arises out of the pending attempt to evict Renee Shizue Ramos, aka  
15 Renee Shizue Yamagishi (“Plaintiff”) from her family home since 1965 commonly known as  
16 2703 Mathews Street Berkeley California. (the “Property”) This eviction is taking place while an  
17 action seeking to set aside the foreclosure sale that resulted in its current owner, Champery Real  
18 Estate 2015 LLC having title to the Property. This case is not a typical wrongful foreclosure  
19 action where the argument is the sale was wrongful because the party holding the deed of trust  
20 was not the beneficiary following assignment. Instead this case involves the foreclosing parties  
21 violation of Plaintiff’s fundamental right under California law to reinstate or redeem before the  
22 sale took place.  
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25 As set out in the accompanying declaration of Plaintiff, on or about June 26, 2006,  
26 Plaintiff and Avelino Ramos entered into a residential mortgage loan transaction with Aegis  
27

1 Lending Corporation, consisting of a promissory note in the sum of \$392,700.00. That  
2 promissory note was secured by a deed of trust against the Property.

3 On or about February 13, 2018 Defendants Wilmington, Nationstar and Aztec caused a  
4 notice of default on the Subject Loan to be recorded in the Alameda Recorder's office seeking  
5 the sum of \$315,431.61. On or about June 24, 2019, Defendants Wilmington, Nationstar and  
6 Aztec, caused to be recorded in the Alameda County Recorder's Office a Notice of Trustee's  
7 sale. Pursuant to that notice, the sale was set for July 17, 2019, at 12:30 p.m. Thereafter, the  
8 Trustee's sale was to September 25, 2019, meaning that the last day to reinstate the loan pursuant  
9 to *Civil Code* section 2924c was September 25, 2019 before the sale. Under California law  
10 Plaintiff had the right to redeem the loan up to the foreclosure sale by tendering the full amount  
11 due on the loan.  
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13  
14 Following the recording of the notice of default and more than five days before the  
15 date of a noticed trustee's sale, pursuant to *Civil Code* section 2943, Plaintiff on numerous  
16 occasions requested that Defendants Wilmington and Nationstar, provide a payoff and/or  
17 reinstatement statement. *Civil Code* section 2943 required that Defendants, provide a payoff or  
18 reinstatement statement amount within 21 days of a request together with a true, correct, and  
19 complete copy of the note or other evidence of indebtedness with any modification thereto, and a  
20 beneficiary statement.  
21

22 In violation of *Civil Code* section 2943 and the right to reinstate pursuant to *Civil*  
23 *Code* section 2924c, Defendants Wilmington and Nationstar, failed to timely respond to requests  
24 for a reinstatement amount. This actually frustrated and prevented Plaintiff from exercising the  
25 right to reinstate the loan in violation of *Civil Code* section 2924c.  
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1 On September 12, 2019, more than 5 days before the date noticed for the foreclosure  
2 sale, Plaintiff tendered to Wilmington, Nationstar and Aztec the amounts due on the loan. On  
3 September 12, 2019, Defendants through their attorney, Amanda Hamilton, notified Plaintiff by  
4 email that her tender was accepted by her clients, but an exact payoff amount was not provided.  
5 The email accepted Plaintiff's offer of payment in full with a \$5,000 discount but provided no  
6 amount for the actual redemption. This itself was a violation of *Civil Code* section 2943 which  
7 required Defendants to provide a true and correct payoff and reinstatement statements in  
8 response to Plaintiff's request. This also frustrated and prevented Plaintiff from exercising her  
9 right to reinstate or redeem loan pursuant to *Civil Code* section 2924c.  
10

11 On September 25, 2019, at approximately 8:17 am Plaintiff tendered to Defendants  
12 Wilmington, Nationstar and Aztec, all sums due on the loan for full redemption in compliance  
13 with *Civil Code* sections 2903 and 2905. Defendants did not respond to this tender or accept it  
14 and at approximately 12:30 pm held a sale in violation of *Civil Code* section 2924c after Plaintiff  
15 had tendered. The Property was purchased by Breckenridge Property Fund LLC, who did so  
16 despite Plaintiff telling their agent at the sale that she had redeemed. On August 17, 2021,  
17 Breckenridge quitclaimed its interest in the Property to Champery Real Estate 2015, LLC.  
18

19 Following the sale, Breckenridge obtained a judgment for possession of the Property in  
20 Alameda Superior Court case no. RG-19038318. Plaintiff then filed this action. Champery  
21 requested a writ of possession and seeks to evict Plaintiff from her Property based on the  
22 judgment in case no. RG-19038318. An eviction is currently set for May 16, 2023. The eviction  
23 is an attempt at an end run around the case before this Court and will subject Plaintiff to  
24 irreparable harm if allowed as set forth in Plaintiff's declaration.  
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**II.**

**AN INJUNCTION MAY BE GRANTED WHERE IT APPEARS THAT  
THE COMMISSION OR CONTINUANCE OF AN ACT WILL CAUSE  
IRREPARABLE INJURY TO A PARTY TO THE ACTION**

Section 525 of the *California Code of Civil Procedure* provides that an injunction may be granted by a court in which an action is brought or by a judge thereof. Pursuant to section 527 of *California Code of Civil Procedure*, an injunction may be granted at any time before judgment upon a verified complaint, or upon affidavits to the complaint in the one case or the affidavits in another case, if they satisfactorily show that sufficient grounds exist.

Section 526 of *California Code of Civil Procedure* provides an injunction may be granted:

1. When it appears by the complaint that the plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists of restraining the commission or continuance of the act complained of, either for a limited period or perpetually;
2. When it appears by the complaint or affidavits that the commission or continuance of some act during the litigation will produce waste, or great or irreparable injury, to a party to the action;
3. When it appears during the litigation that a party to the action is doing or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the right of another party to the action respecting the subject of the action, and tending to render the judgment ineffectual; . . .
6. Where the restraint is necessary to prevent a multiplicity of proceedings. . . .

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**III.**

**A TEMPORARY RESTRAINING ORDER AND PRELIMINARY  
INJUNCTION ARE APPROPRIATE IN THIS CASE**

A court should issue a temporary restraining order and preliminary injunction to maintain the status quo while an issue is pending before the moving party has shown irreparable harm and a likelihood of success on the merits. *Vo v. City of Garden Grove*, (2004) 115 Cal.App.4th 425, 433.

With regard to irreparable harm, it is generally presumed that loss real property and in particular loss of a single-family residence the Plaintiff occupies constitutes irreparable harm. e.g. *Civil Code* section 3387. See also *Reiserer v. Foothill Thrift and Loan*, (1989) 256 Cal. Rptr. 508, 509. In this case, as set out in Plaintiff’s declaration, there is also great risk that Plaintiff will suffer injury in the form of severe emotional harm, the potential of direct loss of a property she has a right to possess which cannot be compensated for with money.

With regard to the second element, likelihood of success on the merits, the Court needs to consider the court’s ruling in *Turner v. Seterus, Inc.*, (2018) 27 Cal.App.5th 516. In *Turner* the court held that violation of *Civil Code* section 2924c in holding a foreclosure sale despite a proper tender before the sale stated a valid basis to declare a foreclosure sale void. Particularly when the foreclosing party frustrated the homeowners attempt to redeem or reinstate as it occurred in this case. The reasoning is simple. While a beneficiary does have the right to hold a non-judicial foreclosure sale and not involve the courts, in order to do so the foreclosing party must strictly comply with the law applicable to that right. *Anderson v. Heart Federal Sav. & Loan Assn.* (1989) 208 Cal.App.3d 202, 211; *System Inv. Corp. v. Union Bank* (1971) 21

1 Cal.App.3d 137, 152-153. Thus, a foreclosure is wrongful when it is held in violation of the  
2 borrower's right to reinstate or redeem a loan after a default.

3 To prove a claim for wrongful foreclosure on the ground stated in this case, all the  
4 plaintiff needs to establish is that she met her statutory obligation by timely tendering the amount  
5 required by *Civil Code* section 2924c to stop the foreclosure sale, but the lender refused that  
6 tender and allowed the foreclosure sale to go forward when the lender should have accepted the  
7 tender and canceled the sale. *Turner v. Seterus, Inc.*, supra, at 530-531.  
8

9 The Court should note that in this context, "tender" does not mean actual payment of the  
10 reinstatement amount. A tender is an offer of performance. *Turner v. Seterus, Inc.*, supra; *Civil*  
11 *Code*, section 1485. Subdivision (a)(1) of *Civil Code* section 2924c provides in relevant part:  
12

13  
14 Whenever all or a portion of the principal sum of any obligation secured by deed of trust  
15 ... has ... been declared due by reason of default in payment of interest or of any  
16 installment of principal ..., the trustor ... may pay to the beneficiary ... the entire amount  
17 due, at the time payment is tendered ... other than the portion of principal as would not  
18 then be due had no default occurred, and thereby cure the default theretofore existing, and  
thereupon, all proceedings theretofore had or instituted shall be dismissed or discontinued  
and the obligation and deed of trust ... shall be reinstated and shall be and remain in force  
and effect ....

19  
20 For purposes of *Civil Code* section 2924c tender has effectively occurred when the  
21 borrower informs the foreclosing party that he or she would like to pay off the entire amount of  
22 the default. Actual submission of payment is not required. *Turner v. Seterus, Inc.*, supra, at 531-  
23 532. "This conclusion is bolstered by the legal maxim that "[n]o one can take advantage of his  
24 own wrong." (*Civ. Code*, § 3517.)" *Id.*  
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26 Plaintiff's declaration in support of this application shows that in fact she did tender and  
27 despite that tender the sale was wrongfully held. Therefore she is likely to prevail on the merits.  
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**IV.  
CONCLUSION**

The facts set out a basis for issuance of a temporary restraining order and order to show cause barring the eviction of Plaintiff from the Property. The Court should issue a temporary restraining order barring Plaintiff's eviction at least until this matter can be more fully heard on an order to show cause for a preliminary injunction.

Dated: May 12, 2023

STEPHEN F. LOPEZ ESQ. APC

By: \_\_\_\_\_  
Stephen F. Lopez, Attorneys for  
Plaintiff, Renee Shizue Ramos, aka Renee  
Shizue Yamagishi