

## **Kamran Banayan**

7536 Mar Avenue  
La Jolla, CA 92037  
TEL: (858) 459-7579  
Email: kbanayan@san.rr.com

February 17, 2015

Janet L. Yellen, Chair  
Board of Governors of the Federal Reserve System  
20th Street and Constitution Avenue N.W.  
Washington, D.C. 20551

Office of the Comptroller of the Currency  
Midsize Bank Supervision,  
Attention: Bob Phelps  
1 South Wacker Drive, Suite 2000  
Chicago, IL 60606

**Re: Merger between CIT & Onewest Bank.**

Dear Chair Yellen & Comptroller of the Currency:

I am writing you in great distress to offer my opposition for the pending Onewest and CIT merger. I would appreciate your consideration as you evaluate the recent requests by Onewest, that public hearings not be conducted. I further urge you and other regulators not to approve this merger.

Onewest has financially destroyed me and thousands of other borrowers. As my case is unique, I will explain further below. However, in the meantime, I would like to bring your attention to the following:

1. In its efforts to petition to Chair Yellen and Comptroller of Currency, Onewest in their website encourages people to write:

“...This merger will ..... I believe the management team and OneWest have demonstrated its commitment to our community and to serving the needs of not only their clients but the community at large and due to this, I do not believe there is a need for a public hearing. “

However in my personal experience dealing with Onewest, I believe that the above statement cannot be further from the truth.

To allow the merger between Onewest and CIT to proceed under any circumstance, especially without public hearings would be a travesty of justice, fairness and prudence after OneWest has demonstrated its non-commitment to any community and utter disregard for fairness in numerous communities across our country.

2. It would be ironic to witness a financial institution like Onewest, who has financially destroyed thousands of taxpaying borrowers including myself, and who has used the funds backed by the taxpayers to quash its litigants in court using massive funds at their disposal and abuse the justice system to their advantage, and whose behavior is a matter of record, and whose dealings with borrowers have been categorized by many as financial atrocities, to obtain the privilege of becoming a “too big to fail institution” whose liabilities will be covered by the taxpayer in the event of another economic slowdown.
3. Not knowing the specifics of my case and the legal ordeal Onewest has put me through in the past six years dealing with them at great personal expense, you may be inclined to dismiss my comments and warnings regarding this Monster of an Institution as comments from a disgruntled borrower or litigant who is facing foreclosure. However, through six years of litigation I have discovered evidence that should shock the conscience of your committee members – especially given the financial ruin caused by other institutions similarly situated to Onewest and IndyMac. To allow this institution to merge with a low-income lender on the heels of one of the worst recessions in this country would only ensure a repeat of the circumstances we are just now clawing back from.
4. Attached to this letter, please find a complete explanation of how Indymac Ventures LLC, a subsidiary of Onewest, and related to Onewest Loan Servicing, has foreclosed on over 600 borrowers with construction loans like mine, (aside from thousands of other foreclosures that are not the subject of my letter) while not having had bonafide titles to these loans, thereby making these foreclosures wrongful and outright illegal, and open to substantial liability. Their cases, as far as the titles to their foreclosed properties are concerned, are very much like one aspect of my case as is spelled out in the attached motion. (PLEASE SEE ATTACHMENT)

I have been privy to look at this list of over 600 borrowers and have had conversations with a few on the list. Although a great majority of them do not yet know about the alleged defect in the ownership chain of the titles of their notes, the few I have talked to are aware and waiting for the outcome of a specific case in the California Court of Appeals, before they

can proceed with their claims against Onewest. In short, this is a substantial liability that will fall on the shoulders of the future “too big to fail institution” at the expense of the taxpayer in the event these borrowers file lawsuits for wrongful and illegal foreclosures – I would urge you to consider this fact among many others and not approve the merger between CIT and Onewest, at the very least not without public hearings.

5. And in case you find my history as it pertains to Onewest relevant, I offer you the following for consideration:

I am about to lose a house (to foreclosure) that I have owned since 1994 and have worked on and spent most of my lifesavings building and remodeling from 2006 to 2010. In addition I have been in litigation with Onewest and its subsidiary from 2010 until present. For the sake of brevity I will leave out a lot of pertinent information that I can provide upon request.

- a. On January 8, 2007, I entered into a Residential Construction Loan with the former IndyMac Bank to obtain a thirty-two (32) year construction-to-permanent loan. For the first 15 months of construction there were no problems with the bank funding disbursements. Funds would be disbursed usually within 3 or 4 days. However as of March of 2008 when IndyMac bank started having financial difficulties that have been well documented, disbursements started to be substantially delayed, therefore causing delays in the completion of the project. Finally FDIC took over IndyMac in July 2008 and also further delayed disbursements, and subsequently Onewest Bank took over in March of 2009. Even though by March of 2009 construction was not finished due to delayed disbursements, Onewest extended the construction term of the loan and continued to fund the project also with a lot of delays in disbursements. For example one of the disbursements took 119 days to fund instead of 48-96 hours! Finally on May 13, 2010 the City of San Diego authorized occupancy. At that point Onewest still insisted that the project was not complete and did not fully fund the construction loan. However in August of 2010, OneWest indicated to me that they will finalize the loan only if I accept a 3 year term mortgage with a balloon payment at the end of 3 years instead of the 30 year term that I had originally contracted for. Given all the delays, this was not an acceptable Reverse Modification to the original deal.
- b. Since I could not accept their offer, I retained legal counsel for advice and was left with no alternative but to file a complaint in the Superior Court and pursue legal action. My attorney was shocked by Onewest’s behavior and took my case on contingency basis. Unfortunately, after more than 2 years in litigation, I never

made it to a trial by jury and the court granted OneWest's motion for summary judgment, which is now under appeal. My single Member Limited Liability Company that had title to the house had to file for chapter 11 bankruptcy protection. Because of further judicial technicalities, OneWest was able to convince the Judge to convert the case from a Chapter 11 to chapter 7 liquidation. The property is supposed now in the process of being auctioned off in the coming month – all while my appeal from the Superior Court case is still pending.

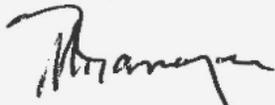
- c. All of this for a \$3.4 Million loan that was fully secured by the property. Onewest has spent over \$1 Million Dollars on attorney fees and I have incurred attorney fees well above \$500,000, while Onewest could have simply agreed to give me the original 30 year mortgage that I had contracted for, again, fully secured by the property. Ironically, I was not even asking for a loan modification per se, as thousands of other were, I was simply asking the Bank to uphold the original terms of my loan.
6. What is very disturbing, aside for the fact that I have spent 10 years of my life fulltime on this project is that unlike the majority of borrowers that find themselves in a similar predicament, I know that I would have had equity in the property were it not for litigation costs that consumed all my equity. Further, I could afford the payments, but only if Onewest honored the original terms of my loan. However, since I have filed a lawsuit against Onewest to protect my rights, primarily because I was denied my 30 year term loan, and damages caused due to delayed disbursements, Onewest has rejected to respond to any of my offers for a reasonable settlement in the past 5 years
7. Ironically, I have been led to believe that the reason Onewest easily favors spending funds on attorneys in lieu of any settlement which can be easily achieved (given their secured interests), is that on their Profit & Loss Share agreement with FDIC, any attorney fees would be funded from FDIC's portion of the interest in the loan, while Onewest only partakes from the proceeds and profits of any sale. That point is well beyond me and maybe one for the experts to decide. However, if this point is true, then of course it establishes further a future modus operandi for Onewest as a "too big to fail" institution, when its liabilities would be financed by the taxpayer, and any income or profit would go into their pockets. Their blatant disregard for the taxpayer's interest is very clear now at this point and should be explored at public hearings.
8. Apparently 220 other borrowers who were in the same situation as myself, had reluctantly accepted the 3 year terms offered to them instead of their 30 years terms and after the lapse of 3 years, having had difficulty to

February 17, 2015

refinance and payoff their entire loan balances, Onewest (probably to avoid 220 other lawsuits like mine), has offered them an extension of 27 years, thereby honoring their original obligations in a roundabout way. An offer that never came my way.

For further explanation or clarification, please contact me, and again I urge you not to approve the merger under any circumstance and at the very least not without public hearings.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kamran Banayan', written in a cursive style.

Kamran Banayan

Enclosures:

1 John L. Smaha, Esq., Bar No. 095855  
2 SMAHA LAW GROUP, APC  
3 2398 San Diego Avenue  
4 San Diego, CA 92110  
5 T: (619) 688-1557  
6 F: (619) 688-1558

7 Attorney for Plaintiff YBA Nineteen LLC

8 Saied Kashani, SBN 144805\*  
9 800 W. 1st St. Suite 400  
10 Los Angeles, CA 90012  
11 tel. (213) 625 4320

12 UNITED STATES BANKRUPTCY COURT

13 SOUTHERN DISTRICT OF CALIFORNIA

14 **IN RE:** ) **Case No. 13-00968-LA11**  
15 ) **Chapter 11**  
16 **YBA NINETEEN LLC** )  
17 )  
18 **YBA NINETEEN LLC** ) **COMPLAINT FOR DECLARATORY**  
19 **Plaintiffs** ) **RELIEF, INJUNCTION AND DAMAGES**  
20 ) **AND OBJECTION TO PROOF OF**  
21 **v.** ) **CLAIM**  
22 )  
23 **INDYMAC VENTURE LLC.** )  
24 )  
25 **Defendants.** )  
26 )  
27 )  
28 )

**TABLE OF CONTENTS**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

INTRODUCTION.....1  
JURISDICTION.....1  
The Base Case and Parties.....1  
ORIGIN AND ALLEGED CHAIN OF TITLE OF IMV LLC'S CLAIM..... 1  
DISCOVERY..... 6  
LEGAL ANALYSIS..... 6  
FIRST CLAIM FOR RELIEF..... 8  
SECOND CLAIM FOR RELIEF..... 8  
THIRD CLAIM FOR RELIEF..... 9  
FOURTH CLAIM FOR RELIEF..... 10  
FIFTH CLAIM FOR RELIEF..... 10  
TIMELINE..... 11

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

PLEASE NOTE: THE FIRST 15 ITEMS ON THIS MOTION THAT ARE NOT RELATED TO OTHER LOANS ARE DELETED, IN OREDER TO SAVE TIME FOR THE READER AS THIS COPY IS NOW AN ATTACHMENT TO THE LETTER.

1 claims to be at the end of a valid chain of title of the Note and Deed  
2 of Trust that, necessarily, begins with IndyMac Bank F.S.B. and ends  
3 with IMV LLC.

4 20. To prove its claim and standing herein, IMV LLC must  
5 therefore establish a valid and unbroken chain of title from IndyMac  
6 Bank F.S.B., the original holder of the Note and beneficiary of the Deed  
7 of Trust, to IMV LLC.

8 21. The analysis begins with the declaration of IndyMac  
9 Venture LLC's own witness, Jeanie Caldwell, filed in this Court on  
10 April 10, 2013 (copy attached as Exhibit A). In paragraph 1 of  
11 her declaration Caldwell defines terms and entities, specifically:

12 1 I am a First Vice President of IndyMac Mortgage Services, the servicing agent for  
13 IndyMac Venture, LLC, a Delaware limited liability company ("Movant" or "Lender"). I am  
14 familiar with the matters set forth herein based upon my own personal knowledge and my review  
15 of the books and records of Lender, IndyMac Bank, F.S.B. ("Bank") and Indymac Federal Bank  
16 FSB ("IMFB"), except for those facts which are based upon information and belief and, as to

17 Thus according to Caldwell:

18 **Lender** = IndyMac Venture LLC

19 **Bank** = IndyMac Bank F.S.B.

20 **IMFB** = IndyMac Federal Bank FSB

21 22. In paragraph 2 of her declaration, Caldwell correctly  
22 states that on January 3, 2007, "Bank," or **IndyMac Bank F.S.B.**,  
23 made the actual loan (the "Loan") in question in this case to the  
24 borrower Kamran Banayan, and further that Bank received back a  
25 deed of trust on the Property. This is the Loan and Deed of Trust  
26 on which IMV LLC bases its secured claim today. Bank or IndyMac  
27 Bank FSB is the originator and lender of the Loan, holder of the  
28 Note, and the unquestioned original beneficiary under the Deed of

1  
2  
3                   **ORIGIN AND ALLEGED CHAIN OF TITLE OF IMV LLC'S CLAIM**

4           15.   Prior to 2008, IndyMac Bank F.S.B. was a duly organized bank  
5 with headquarters in California that was engaged in, among other  
6 activities, lending secured by real estate. IndyMac Bank F.S.B. is the  
7 original and actual lender in this case.

8           16.   As admitted by IMV LLC in the Declaration of Jeannie Caldwell  
9 filed herein, on January 3, 2007, "Bank" or **IndyMac Bank F.S.B.** made an  
10 actual loan (the "Loan") to an individual, Kamran Banayan ("Kamran"),  
11 who was then the record owner of the Property. The Loan was evidenced  
12 by a promissory note (the "Note") labeled an "Adjustable Rate Note"  
13 dated January 3, 2007 and also a loan agreement of even date. The Note  
14 was signed by Kamran as the borrower.

15           17.   The Note was secured by a Deed of Trust (the "Deed of Trust")  
16 also signed and executed by Kamran as owner of the property on January  
17 3, 2007. The Deed of Trust secured, among other things, repayment of  
18 the Note. The Deed of Trust named as beneficiary IndyMac Bank F.S.B. or  
19 Bank. The Deed of Trust was duly recorded on the Property on or about  
20 January 12, 2007.

21           18.   IndyMac Bank F.S.B. or Bank was thus the first and only  
22 *indisputable* holder of the Note and Deed of Trust.

23           19.   IMV LLC claims to be the current holder of the Note and Deed  
24 of Trust. IMV LLC's secured claim is based on the said Note and Deed of  
25 Trust. However it is evident that IMV LLC is not the named payee or  
26 holder of the Note or beneficiary of the Deed of Trust. IMV LLC does  
27 not claim to be the successor-in-interest of IndyMac Bank F.S.B. through  
28 acquisition of or merger with IndyMac Bank F.S.B. Instead, IMV LLC

1 Trust.

2 23. In her declaration para. 3, Caldwell avers:

3 Bank. On July 11, 2008 Bank was seized by the Office of Thrift Supervision, which appointed the  
4 Federal Deposit Insurance Corporation ("FDIC") as Receiver for Bank. Also on July 11, 2008,  
5 the FDIC, as Receiver for Bank, transferred certain assets of Bank, including the Loan, to IMFB, a  
6 newly chartered thrift for which the FDIC was appointed Conservator. On March 19, 2009, the

7 Thus on July 11, 2008, the FDIC was appointed Receiver of  
8 "Bank," meaning of IndyMac Bank FSB. The same day, FDIC as  
9 receiver of IndyMac Bank FSB **transferred the subject Loan to IMFB**  
10 **or IndyMac Federal Bank FSB.** Therefore on and after **July 11,**  
11 **2008,** the Loan was held by IndyMac Federal Bank FSB aka IMFB.

12 24. IMV LLC further claims that it received and recorded a  
13 valid assignment of the deed of trust, a copy of which is attached  
14 as Exhibit B. This is a document signed and dated June 22, 2009  
15 and recorded June 30, 2009 in Official Records, County of San  
16 Diego.

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 25. The assignment in no way, shape or form constitutes a  
24 valid assignment. The assignment states:

25 **FOR VALUE RECEIVED, THE FEDERAL DEPOSIT INSURANCE CORPORATION AS RECEIVER FOR INDYMAC**  
26 **BANK, FSB ("Assignor") does hereby grant, sell, assign, transfer and convey, unto INDYMAC VENTURE, LLC, whose**  
27 **address is: c/o Indymac Mortgage Services, Consumer Lending Division, 888 East Walnut Street, Pasadena, CA 91101, all**  
28 **of Assignor's right, title and interest in, to and under that certain Deed of Trust dated January 03, 2007 and executed by**  
**KAMRAN BANAYAN, to and in favor of IndyMac Bank, F.S.B., and recorded on January 12, 2007, in SAN DIEGO**  
**County, State of CALIFORNIA, as Document Number 2007-0027949 (the "Deed of Trust"), which encumbers the**  
**following real property:**

. . .

1 **IN WITNESS WHEREOF, he undersigned have executed this Corporation Assignment of Deed of Trust on June 22, 2009.**

2 **FEDERAL DEPOSIT INSURANCE CORPORATION AS RECEIVER FOR INDYMAC**  
3 **BANK, FSB**

4 By:

*Daris Buckler*  
Daris Buckler, Attorney-in-Fact

5  
6 In other words, the document states that "FEDERAL DEPOSIT  
7 INSURANCE CORPORATION **AS RECEIVER FOR INDYMAC BANK FSB**  
8 ("**Assignor**") does hereby grant, sell... that certain Deed of  
9 Trust." The document is also signed by FDIC as receiver of  
10 IndyMac Bank FSB.

11 26. Thus by the assignment, in June 2009 IndyMac Bank FSB  
12 (in receivership) purported to transfer the Loan to IndyMac  
13 Venture LLC.

14 27. The problem, of course, is that as of the assignment,  
15 June 2009, the identified assignor, "IndyMac Bank FSB," no longer  
16 held the loan. Instead, as Caldwell averred, one year earlier, in  
17 July 2008, the Loan had been transferred to an entirely separate  
18 entity, IndyMac Federal Bank FSB. **Thus at the time of the alleged**  
19 **assignment to IndyMac Venture LLC, the alleged assignor, IndyMac**  
20 **Bank FSB, did not hold the Loan and had nothing to assign.**

21 28. The signer of the Assignment is Daris Buckler. On  
22 February 12, 2013, Ms. Buckler testified in another case. Copies  
23 of relevant pages of the deposition are attached as Exhibit D. At  
24 p. 62 of the deposition Buckler confirmed:

25 Q. The first paragraph of your declaration  
26 refers to a IndyMac Federal Bank FSB and  
IndyMac Bank FSB. Do you see that?

27 A. Yes.

28 Q. **Are those two separate entities, IndyMac**

1                   **Federal Bank, FSB and IndyMac Bank FSB?**

2                   **A. Yes.**

3  
4           29. This confirmation that what Caldwell calls "Bank" and  
5 "IMFB" are two separate entities, was not available to debtor  
6 herein until the week of July 10.

7           30. IMV LLC also contends, as it must, that it is the  
8 assignee of the Note herein. Pursuant to the Commercial Code, the  
9 note assignment or allonge, to be valid, must be physically  
10 attached to the Note. IMV LLC's alleged note assignment or  
11 allonge in this case, was also part of the Caldwell declaration is  
12 and reproduced hereto as Exhibit C.

13           31. As an initial matter, the allonge is plainly not  
14 attached to the Note. There are no staple or other attachment  
15 marks visible on the copy filed with this Court.

16           32. But even if the allonge were attached, indeed especially  
17 if it were attached, it is just as defective as the assignment of  
18 deed of trust. The allonge, like the assignment, states it is an  
19 assignment of the Note from "FDIC as Receiver for IndyMac Bank  
20 FSB" to IndyMac Venture LLC.

21           33. The allonge is undated (which is a problem in itself).  
22 Typically the allonge is executed the same date as the assignment  
23 of deed of trust, or June 2009. But it is certain that the  
24 allonge was executed after July 2008, because the putative  
25 transferee, IndyMac Venture LLC, was not formed until March 19,  
26 2009. Thus the allonge must have been executed after the Loan was  
27 transferred to IndyMac Federal Bank FSB. Because the allonge  
28 transferee is IndyMac Bank FSB, an entity that at the time of the

1 allonge, no longer held the note, the allonge is ineffective and  
2 passed no title to IndyMac Venture LLC.

3 33A. Attached is a timeline illustrating the ineffective  
4 transfers.

5 34. Although it is plainly not the holder of the Note or  
6 Deed of Trust and has no standing to assert either instrument,  
7 prior to the filing of the Petition herein, IMV LLC recorded a  
8 Notice of Default and instituted a foreclosure of the Deed of  
9 Trust. This action, in fact, precipitated the bankruptcy filing  
10 herein. Post-petition, IMV LLC filed a Proof of Claim in which  
11 IMV LLC asserted that it, IMV LLC, is the holder of the claim and  
12 therefore the holder of the underlying Note and Deed of Trust.  
13 IMV LLC also filed a motion for relief from stay and continues to  
14 demand relief from stay. All of these activities caused damages  
15 and expenses to the Debtor not to mention placed burdens on this  
16 Court.

#### 17 **DISCOVERY**

18 35. Prior to July 2013, Debtor accepted IMV LLC's claim of  
19 standing in good faith and assumed that IMV LLC was the holder of  
20 the claim. However in July 2013, the debtor and its bankruptcy  
21 counsel "compared notes" with Attorney Saied Kashani, who has  
22 litigated several cases against IMV LLC and related entities. Mr.  
23 Kashani "brought to the table" the benefit of the deposition of  
24 Daris Buckler and knowledge of IMV LLC's similar inaccurate claims  
25 in another case. Debtor had no knowledge or reasonable means of  
26 discovering this information prior to July 2013.

#### 27 **LEGAL ANALYSIS**

28 36. California Civil Code § 2924(a)(6) provides:

1 No entity shall record or cause a notice of  
2 default to be recorded or otherwise initiate  
3 the foreclosure process **unless it is the**  
4 **holder of the beneficial interest under the**  
5 **mortgage or deed of trust**, the original  
6 trustee or the substituted trustee under the  
7 deed of trust, or the designated agent of the  
8 holder of the beneficial interest. No agent of  
9 the holder of the beneficial interest under  
10 the mortgage or deed of trust, original  
11 trustee or substituted trustee under the deed  
12 of trust may record a notice of default or  
13 otherwise commence the foreclosure process  
14 **except when acting within the scope of**  
15 **authority designated by the holder of the**  
16 **beneficial interest.**

17 37. Because IndyMac Venture LLC is *not* a valid assignee of  
18 the Deed of Trust, it is not the "holder of the beneficial  
19 interest under the mortgage or deed of trust." Therefore IndyMac  
20 Venture LLC had no legal right to record or direct the trustee to  
21 record the Deed of Trust or otherwise commence or conduct a  
22 foreclosure. IndyMac Venture LLC also has no valid secured claim  
23 in this bankruptcy. Needless to add, IndyMac Venture LLC lacks  
24 any standing to apply for relief from stay.

25 38. In bankruptcy court, the claimant must demonstrate  
26 standing in order to pursue or enforce a claim. Courts have not  
27 hesitated to sustain objections to claims where, as here, the  
28 claimant cannot demonstrate standing. See In re Jones, 2008 WL  
4539486 at \*5 (Bankr.D.Mass Oct 3, 2008) (assignment of mortgage  
required to establish accurate chain of ownership of mortgage);  
see also In re Hayes, 393 B.R. 259, 270 (Bankr.D.Mass. 2008)  
(order entered sustaining objection to proof of claim where bank  
failed to demonstrate standing, either by showing that it held  
note or mortgage or that it serviced loan); see also In re Maisel,

1 378 B.R. 19, 22 (Bankr.D.Mass. 2007) (bank filing lift-stay motion  
2 must demonstrate standing).

3 39. This is not a situation where the claimant received a  
4 valid assignment but failed to record it. Here, claimant recorded  
5 an assignment and claims possession of an allonge. But both the  
6 recorded assignment and allonge are defective in light of IMV  
7 LLC's admissions.

8 **FIRST CLAIM FOR RELIEF**

9 **Objection to Claim of IMV LLC**

10 40. Plaintiff re-alleges and incorporates herein paragraphs  
11 1 through 39, above by this reference.

12 41. The foundation of IMV LLC's claim is the Note and Deed  
13 of Trust originally issued in favor of IndyMac Bank F.S.B. To  
14 proceed, IMV LLC must establish a valid and unbroken chain of  
15 title of the Note and Deed of Trust from IndyMac Bank F.S.B. to  
16 IMV LLC.

17 42. IMV LLC has no chain of title or right, title or  
18 interest in the subject Note or Deed of Trust, because IMV LLC's  
19 stated assignor, IndyMac Bank F.S.B., as stated in IMV LLC's own  
20 allonge and assignment of Deed of Trust, *no longer held* the Note  
21 or Deed of Trust as of the date of the assignment and allonge.  
22 IMV LLC therefore received nothing because its assignor had  
23 nothing to assign.

24 43. The claimant must be the actual holder of the claim.  
25 Whoever the current holder is, IMV LLC is plainly not the holder.  
26 Therefore IMV LLC's claim should be rejected in full.

27 **SECOND CLAIM FOR RELIEF**

28 **Violation of 11 USC s 362(a)(3)**

1 44. Plaintiff re-alleges and incorporates herein paragraphs  
2 1 through 39, above by this reference.

3 45. The filing of an improper Proof of Claim constitutes a  
4 violation of the automatic stay as set forth in 11 USC s  
5 362(a)(3).

6 46. IMV LLC's violation caused the Debtor considerable  
7 expenses and damages including the expenses of responding to the  
8 claim and the motion for relief from stay.

9 47. IMV LLC's violation was deliberate and oppressive, in  
10 that IMV LLC had, in its possession, the information imparted by  
11 Caldwell and by Daris Buckler in the deposition in the other case,  
12 thus, IMV LLC knew it had no chain of title to these assets.

13 48. IMV LLC is thus liable to Debtor for actual damages,  
14 punitive damages and legal fees.

15 **THIRD CLAIM FOR RELIEF**

16 **Violation of Civil Code s 2924**

17 49. Plaintiff re-alleges and incorporates herein paragraphs  
18 1 through 39, above by this reference.

19 50. Under California Civil Code s 2924, only the actual  
20 beneficiary of the Deed of Trust can record or cause to be  
21 recorded a Notice of Default or institute a foreclosure. IMV LLC  
22 did both prior to the Petition and continues to assert both in its  
23 motion for relief from stay.

24 51. IMV LLC is not the holder of the beneficial interest in  
25 the Deed of Trust.

26 52. IMV LLC's violation caused damages to the debtor  
27 including the expenses of this filing, not to mention the burden  
28 on this Court.



1 otherwise seeking to enforce the Deed of Trust.

2 WHEREFORE, plaintiff prays as follows:

3 A. For an order disallowing and rejecting in full the claim  
4 of IMV LLC filed in this Case, and removing any claim in favor of  
5 IMV LLC from the schedules.

6 B. For actual damages.

7 C. For punitive damages.

8 D. For a declaration that IMV LLC is not the holder of the  
9 subject Note and Deed of Trust and that any Notice of Default or  
10 related instruments recorded by IMV LLC are invalid and should be  
11 expunged from the record.

12 E. For a preliminary and permanent injunction enjoining IMV  
13 LLC, its agents and assigns, and all those acting in concert with  
14 IMV LLC, from instituting or causing to be instituted any  
15 foreclosure of the Deed of Trust or otherwise seeking to enforce  
16 the Deed of Trust.

17 F. For attorney fees and costs of suit.

18 G. For such and other relief as this Court deems proper.

19 Dated: July 22, 2013

20  
21 \_\_\_\_\_  
22 John Smaha  
Attorney for Debtor

*Saied Kashani*  
\_\_\_\_\_  
Saied Kashani  
Special Counsel (proposed)

23 **TIMELINE**

24

Date/evidence	Event	Consequence
25 January 3, 2007 26 - Caldwell Decl. 27 para. 2	IndyMac Bank FSB aka "Bank" originates and makes the Loan and takes the Deed of Trust	IndyMac Bank FSB is the sole holder of the Deed of Trust and Loan
28 July 11, 2008	FDIC takes over IndyMac Bank FSB	IndyMac Bank FSB becomes a receivership

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- Caldwell Decl. para. 3		
July 11, 2008	IndyMac Bank FSB transfers the Loan assets to IndyMac Federal Bank FSB aka IMFB	Thereafter, IndyMac Federal Bank FSB holds the Deed of Trust and Loan
June 22, 2009	Date of purported assignment of Deed of Trust from "IndyMac Bank FSB" to IndyMac Venture LLC	Ineffective assignment. The assignor did not hold the item purportedly being assigned.  Deed of Trust remained with the July 2008 assignee, IndyMac Federal Bank FSB