

1 *Attorney Info.*

2
3 **SUPERIOR COURT OF THE STATE OF NEW YORK**

4 **COUNTY OF NEW YORK**

5 JOHN DOE, an individual

§
§ Case No. [number]

6
7 vs.

§ COMPLAINT FOR TRO, INJUNCTION
§ AND FOR DECLARATORY RELIEF

8 WASHINGTON MUTUAL BANK,
9 FSB; DEUTSCHE BANK NATIONAL
10 TRUST CO. AS TRUSTEE FOR
11 SECURITIZED TRUST WAMU
12 MORTGAGE PASS-THROUGH
13 CERTIFIACTES SERIES 2006-AR4
14 TRUST; WASHINGTON MUTUAL
15 BANK, FA; WAMU ASSET
16 ACCEPTANCE CORP.;
17 WASHINGTON MUTUAL/JP
18 MORGAN CHASE; MORTGAGE
19 ELECTRONIC REGISTRATION
20 SYSTEM, AKA “MERS” AND DOES 1
21 THROUGH 100, INCLUSIVE

§
§
§
§
§
§
§
§
§
§
§
§

22 **APPLICATION FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION,**
23 **AND DECLARATORY RELIEF**

24 COMES NOW, Plaintiffs John Doe (“Plaintiff”) and files *Verified Emergency Petition*
25 *for Temporary Restraining Order and/or Preliminary Injunction, and Declaratory Relief*
26 against the listed Defendants. A temporary restraining order is appropriate to maintain the
27 status quo. Plaintiff’s home will be sold within the next week and Plaintiffs are subject to
28 eviction actions, without immediate intervention from this Court.

A. PARTIES

1 Plaintiff is now, and at all times relevant to this action, a resident of the County of
2 NEW YORK, State of NEW YORK.

3 At all times relevant to this action, Plaintiff has owned the Property located at 1010
4 Wall Street New York, NY 10005 (the "Property").

5 Defendant, Washington Mutual Bank, FA is a National Banking Association, doing
6 business in the County of NEW YORK, State of NEW YORK. Plaintiff is further informed
7 and believes, and thereon alleges, that Washington Mutual is the Originator of the loan.

8 Defendant, Deutsche Bank National Trust Company (hereafter "Deutsche Bank"), as
9 Trustee for securitized trust WAMU Mortgage Pass-Through Certificates Series 2006-AR4
10 Trust (hereafter "WAMU 2006-AR4 Trust"). Plaintiff is informed and believe, and thereon
11 allege that, Defendant Deutsche Bank, is a national banking association, doing business in the
12 County of NEW YORK, State of NEW YORK and is the purported Master Servicer for
13 Securitized Trust and/or a purported participant in the imperfect securitization of the Note and/or
14 the Deed of Trust as more particularly described in this Complaint.

15 Defendant, Washington Mutual Bank, FA. Plaintiff is informed and believe, and
16 thereon allege that, Defendant Washington Mutual Bank, FA, is a corporation, doing business in
17 the County of NEW YORK, State of NEW YORK and is the purported Sponsor for
18 Securitized Trust and/or a purported participant in the imperfect securitization of the Note and/or
19 the Deed of Trust as more particularly described in this Complaint.

20 Defendant, Wamu Asset Acceptance Corp.. Plaintiff is informed and believe, and
21 thereon allege that, Defendant Wamu Asset Acceptance Corp., is a corporation, doing business
22 in the County of NEW YORK, State of NEW YORK and is the purported Sponsor for
23 Securitized
24
25
26
27
28

1 Trust and/or a purported participant in the imperfect securitization of the Note and/or the Deed of
2 Trust as more particularly described in this Complaint.

3 Defendant, Washington Mutual/JP Morgan Chase. Plaintiff is informed and believe, and
4 thereon allege that, Defendant Washington Mutual/JP Morgan Chase, is a corporation, doing
5 business in the County of NEW YORK, State of NEW YORK and is the purported Master
6 Servicer for Securitized Trust and/or a purported participant in the imperfect securitization of
7 the Note and/or the Deed of Trust as more particularly described in this Complaint.
8

9 Defendant, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., aka
10 MERS (“MERS”), Plaintiff is informed and believe, and thereon allege, that MERS is a
11 corporation duly organized and existing under the laws of BROWARD, whose last known
12 address is 1818 Library Street, Suite 300, Reston, Virginia 20190; website:
13 <http://www.mersinc.org>. MERS is doing business in the County of BROWARD, State of
14 NEW YORK. Plaintiff is further informed and believe, and thereon allege, that Defendant
15 MERS is the purported Beneficiary under the Deed of Trust and/or is a purported participant in
16 the imperfect securitization of the Note and/or the Deed of Trust, as more particularly described
17 in this Complaint.
18

19
20 Plaintiff does not know the true names, capacities, or basis for liability of Defendants
21 sued herein as Does 1 through 100, inclusive, as each fictitiously named Defendant is in some
22 manner liable to Plaintiff, or claims some right, title, or interest in the Property. Plaintiff will
23 amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is
24 informed and believe, and therefore allege, that at all relevant times mentioned in this
25 Complaint, each of the fictitiously named Defendants are responsible in some manner for the
26
27
28

1 injuries and damages to Plaintiff so alleged and that such injuries and damages were
2 proximately caused by such Defendants, and each of them.

3 Plaintiff is informed and believe, and thereon allege, that at all times herein mentioned,
4 each of the Defendants were the agents, employees, servants and/or the joint-venturers of the
5 remaining Defendants, and each of them, and in doing the things alleged herein below, were
6 acting within the course and scope of such agency, employment and/or joint venture.
7

8 **B. INTRODUCTION**

9 On March 1, 2006, plaintiff executed and delivered to defendant Washington Mutual a
10 promissory note payable to Originator in the amount of \$520,000.
11

12 On March 1, 2006, as security to defendant Washington Mutual for payment of the note,
13 plaintiff executed a deed of trust/mortgage conveying to MERS as trustee for the Originator as
14 beneficiary/mortgagee, that real property located at 1010 Wall Street New York, NY 10005,
15 which is more specifically described as
16

17 _____ [
18 legal description of real property]. The deed of trust/mortgage was recorded as document
19 number 15585 in the official records of NEW YORK County, NEW YORK. This deed of
20 trust/mortgage is referred to in this complaint as "the deed of trust/mortgage," and the property
21 described in the deed of trust/mortgage is referred to as "the property." A copy of the deed of
22 trust/mortgage is attached, marked Exhibit _____, and incorporated by reference.
23

24 Defendant Washington Mutual did NOT cause to be recorded a notice of default in the
25 official records of NEW YORK County, NEW YORK, alleging that a breach of the obligation
26 secured by
27
28

1 the deed of trust/mortgage has occurred as required by law.¹

2 Defendants, and each of them, intend to sell the property, having given notice that sale
3 of the property. Unless restrained, defendants, and each of them, will thus sell the property or
4 cause the property to be sold. This sale would be to plaintiff's great and irreparable injury, for
5 which pecuniary compensation would not afford adequate relief, in that plaintiff, having no
6 right to redeem the property from the sale, will forfeit the property if the sale takes place as
7 scheduled.
8

9 **C. FACTUAL ALLEGATIONS**

10 For years, mortgage brokers and lenders have been selling loan products that they knew
11 or should have known would never be able to be repaid by the borrower and would prevent
12 borrowers from ever actually owning the home. Instead, borrowers were offered interest-only,
13 negative amortization, and/or other subprime loan products that amounted to no more than a
14 short term lease until the payments became so unaffordable that the borrowers are now faced
15 with either bankruptcy or foreclosure. The housing bubble of the past decade was created by
16 predatory lending practices, such as charging excessive fees, incorporating payment penalties,
17 negative amortization payments, or other abusive terms in the agreements, providing
18 kickbacks to brokers, flipping loans, using balloon payments to conceal the true burden of the
19 financing, requiring unnecessary insurance and other products, including mandatory arbitration
20 clauses, steering borrowers to subprime loans when they qualify for conventional loans, and
21 using bait and switch tactics. All were rampant within the industry without oversight or good
22 judgment and found to be inconsistent with important national objectives, including the goals
23
24
25
26

27 ¹ See *Bliss v. NEW YORK Co-op. Producers*, 30 Cal. 2d 240, 244-246, 181 P.2d
28 369, 170 A.L.R. 1009 (1947).

1 of fair access to credit, community development, and stable homeownership by the broadest
2 spectrum of America. Rather than offering a loan product that was viable and long-term for the
3 borrower and lender, brokers and lenders greedily sold whatever they could get away with,
4 arguably the primary catalyst for what is now this country's worst economic crisis since the
5 Great Depression.
6

7 The loan product sold to Plaintiff in this case was exactly the kind of loan that has
8 contributed to our national problem. The Defendants were aware of this trend, and possessed the
9 foresight to advise Plaintiff of this risk. They intentionally concealed the negative implications of
10 the loan they were offering, and as a result, Plaintiff face the potential of losing their home to the
11 very entity and entities who placed them in this position.
12

13 On or about March 1, 2006 (hereinafter referred to as "Closing Date") Plaintiff
14 entered into a consumer credit transaction with Washington Mutual Bank, FA (hereafter
15 "Washington Mutual") by obtaining a \$520,000 mortgage loan secured by Plaintiff's principal
16 residence, 1010 Wall Street New York, NY 10005. This note was secured by a Deed on the
17 Property in favor of Washington Mutual.
18

19 The terms of the finance transaction with Washington Mutual are not clear or
20 conspicuous, nor consistent, and are illegal which violates several statutes and is in essence creates
21 an illegal loan. Further, this loan was underwritten without proper due diligence by
22 Washington Mutual as evidenced by their failure to verify borrower's income utilizing signed IRS
23 Income Tax Disclosure Form 4506T which would have provided past borrower tax
24 returns. Washington Mutual also used a "GDW Cost of Savings" as the Index for the basis of this
25 loan, because the Lender controls this Index and it is directly based upon the average rate of
26 interest Washington Mutual parent company.
27
28

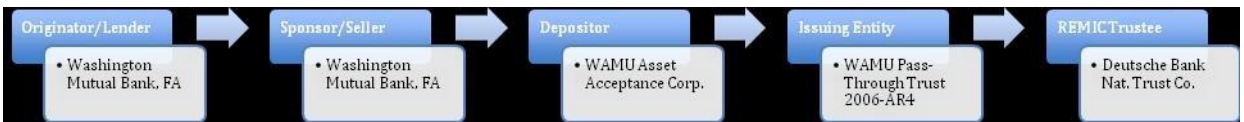
1 In addition, and unbeknownst to Plaintiffs', Washington Mutual illegally, deceptively
2 and/or otherwise unjustly, qualified Plaintiff for a loan which Washington Mutual knew or
3 should have known that Plaintiff could not qualify for or afford by, for example, the
4 underwriter has approved this loan based upon credit scores and the borrower's Stated Income
5 only. Had Washington Mutual used a more accurate and appropriate factor, such as Tax Forms
6 and a more determinative level of scrutiny of determining comply with the requirement to
7 provide Plaintiff with a Mortgage Loan Origination Agreement the debt to income ratio,
8 Plaintiff would not have qualified for the loan in the first place. Consequently, Washington
9 Mutual sold Plaintiff a loan product that it knew or should have known would never be able to
10 be fully paid back by Plaintiff. Washington Mutual ignored long-standing economic principals of
11 underwriting and instead, knowingly, liberally, greedily and without any regard for
12 Plaintiff's rights sold Plaintiff a deceptive loan product.

13
14
15 From 1998 until the financial crash of 2008-2009, over 60 million home loans where sold
16 by originating lender banks to investment banks to be securitized in a complex series of billions of
17 transactions. The Plaintiff's home loan was one of the 60 million notes that were
18 securitized.
19

20 Securitization is the process whereby mortgage loans are turned into securities, or bonds,
21 and sold to investors by Wall Street and other firms. The purpose is to provide a large supply of
22 money to lenders for originating loans, and to provide investments to bond holders which were
23 expected to be relatively safe. The procedure for selling of the loans was to create a
24 situation whereby certain tax laws known as the Real Estate Mortgage Investment Conduit
25 (hereinafter "REMIC") Act were observed, and whereby the Issuing Entities and the Lenders
26 would be protected from either entity going into bankruptcy. In order to achieve the desired
27
28

1 “bankruptcy remoteness,” numerous “True Sales” of the loans had to occur, in which loans
2 were sold and transferred to the different parties to the securitization.

3
4 How a particular mortgage loan ended up being transferred to a REMIC TRUST in the
5 securitization process is governed by a contract known as a Pooling and Servicing Agreement
6 (“PSA”). The PSA is a Trust Agreement required to be filed under penalty of perjury with the
7 United States Securities and Exchange Commission (“SEC”) and which, along with another
8 document, the Mortgage Loan Purchase Agreement (“MLPA”), is the operative securitization
9 document created by the finance and securitization industry to memorialize securitization
10 transactions. Plaintiff’s PSA required at minimum this chain of title:



16
17 A “True Sale” of the loan would be a circumstance whereby one party owned the Note and
18 then sold it to another party. An offer would be made, accepted and compensation given to the
19 “seller” in return for the Note. The Notes would be transferred, and the Deeds of Trust
20 assigned to the buyers of the Note, with an Assignment made every step of the way, and,
21 furthermore, each Note would be endorsed to the next party by the previous assignee of record.
22

23 In order for the Trustee of the Securitized REMIC Trust to have a valid and enforceable
24 secured claim against Plaintiff’s Home, the Trustee must prove and certify to all parties that,
25 among other things required under the PSA:
26

- 27 a. There was a complete and unbroken chain of indorsements and transfers of the
28 Note from and to each party to the securitization transaction (which should be from the (A) Mortgage Originator to the (B) Sponsor to the (C) Depositor to the

1 (D) Trust/Trustee, and that all of these indorsements and transfers were
2 completed prior to the Trust closing dates (see discussion below); and

- 3 b. The Trustee of the Securitized Trust had actual physical possession of the Note
4 at that point in time, when all indorsements and assignments had been
5 completed. Absent such proof, Plaintiff alleges that the Trust cannot
6 demonstrate that it had perfected its security interest in Plaintiff's Home that is
7 the subject of this action. Therefore, if the Defendants, and each of them, did
8 not hold and possess the Note on or before the closing date of the Trust herein,
9 they are estopped and precluded from asserting any secured or unsecured claim
10 in this case.

11 Plaintiff is informed and believes, and thereon alleges, that pursuant to the terms of the
12 PSA, the Mortgage Originator (i.e., the original lender herein) agreed to transfer and endorse to
13 the Trustee for the Securitized Trust, without recourse, including all intervening transfers and
14 assignments, all of its right, title and interest in and to the mortgage loan (Note) of Plaintiff's
15 herein and all other mortgage loans identified in the PSA.

16 Based upon the foregoing, Plaintiff is further informed and believe, and thereon allege,
17 that the following deficiencies exist, in the "True Sale" and securitization process as to this
18 Deed of Trust which renders invalid any security interest in the Plaintiff's mortgage, including,
19 but not limited to:

- 20 a. The splitting or separation of title, ownership and interest in Plaintiff's Note and
21 Deed of Trust of which the original lender is the holder, owner and beneficiary
22 of Plaintiff's Deed of Trust;
- 23 b. When the loan was sold to each intervening entity, there were no Assignments
24 of the Deed of Trust to or from any intervening entity at the time of the sale.
25 Therefore, "True Sales" could not and did not occur;
- 26 c. The failure to assign and transfer the beneficial interest in Plaintiff's Deed of
27 Trust to Deutsche Bank, in accordance with the PSA of the Defendants, as
28 Securitization Participants;
- d. The failure to endorse, assign and transfer Plaintiff's Note and/or mortgage to
Defendant Deutsche Bank, as Trustee for WAMU 2006-AR4 Trust, in
accordance with the PSA;

- 1 e. No Assignments of Beneficiary or Indorsements of the Note to each of the
2 intervening entities in the transaction ever occurred under NEW YORK law, which
3 is conclusive proof that no true sales occurred as required under the PSA filed with
4 the SEC; and
- 5 f. Defendants, and each of them, violated the pertinent terms of the PSA.

6 **D. THE STANDARD FOR INJUNCTIVE RELIEF IS SATISFIED**

7 **1. FORECLOSURE TRO'S:**

8 Injunctive or declaratory relief may be available to prevent an improper private sale of
9 encumbered property on such grounds as that there is no actual default justifying the sale
10 (Bisno v. Sax (1959, 2nd Dist) 175 Cal App 2d 714, 346 P2d 814), that the secured transaction is
11 itself invalid (Daniels v. Williams (1954) 125 Cal App 2d 310, 270 P2d 556), or that
12 inadequate notice of default was given. (Lupertino v. Carbahal (1973, 3rd Dist) 35 Cal App 3d
13 742, 111 Cal Rptr 112) This relief may also be available to resolve a dispute as to the amount of
14 the default. (More v. Calkins (1890) 85 Cal 177, 24 P 729).

15 **2. PRELIMINARY INJUNCTION:**

16 In deciding whether to issue a preliminary injunction, the trial court considers two
17 related factors: (1) the likelihood the plaintiff will prevail on the merits of its case at trial, and
18 (2) the interim harm the plaintiff is likely to sustain if the injunction is denied, as compared to
19 the harm the defendant is likely to suffer if the court grants a preliminary injunction. *Buckland*
20 *v. Threshold Enterprises, Ltd.*, 155 Cal. App. 4th 798, 66 Cal. Rptr. 3d 543 (2d Dist. 2007), as
21 modified, (Oct. 22, 2007).

22 **3. TEMPORARY RESTRAINING ORDER:**

23 Trial courts should evaluate two interrelated factors when deciding whether to issue a
24 restraining order: the first is the likelihood that the plaintiff will prevail on the merits at trial,
25 and the second is the interim harm that the plaintiff is likely to sustain if the restraining order is
26
27
28

1 denied, as compared to the harm that the defendant is likely to suffer if the order is issued.

2 *Church of Christ in Hollywood v. Superior Court*, 99 Cal. App. 4th 1244, 121 Cal. Rptr. 2d 810
3 (2d Dist. 2002).

4 **E. PLAINTIFFS ARE LIKELY TO PREVAIL ON THE MERITS AT TRIAL.**

5 The foreclosure sale and/or any further transfer of ownership or encumbrance must be
6 enjoined because the evidence elicited demonstrates that Plaintiff will succeed on the merits at
7 trial. Plaintiff has successfully alleged nine causes of action against Defendants in this case,
8 including violations of TILA and RESPA; Fraud; Unfair and Deceptive Business Practice;
9 Unconscionability; and Quiet Title.

10 An actual controversy has arisen and now exists between plaintiff and defendants
11 regarding their respective rights and duties. Plaintiff contends that his note and deed of trust
12 where not transferred and/or assigned pursuant to Plaintiff's loan's PSA and/or NEW YORK
13 Law, that defendants violated Federal TILA and RESPA laws, as well as committed fraud in the
14 indictment and concealment at the initiation of the loan. A judicial declaration is necessary and
15 appropriate at this time under all the circumstances so that plaintiff may determine his or her
16 rights and duties under the note and *deed of trust*, specifically,

17 At the very basis of Plaintiff's Complaint, based upon the facts outlined herein and
18 above, Plaintiff has alleged and can demonstrate at trial that Defendants breached their PSA
19 contract and through misrepresentation are about to foreclose on Plaintiff's real property, and
20 that because of the securitization process Defendants and their predecessors in interest failed to
21 properly assign Plaintiff's Mortgage note and Deed of Trust according to state law and the PSA
22 governing the original loan.

23 **PRAYER**

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

WHEREFORE, plaintiff requests judgment as follows:

- 1. A temporary restraining order, a preliminary injunction, and a permanent injunction, all enjoining defendants, defendants’ agents, attorneys, and representatives, and all persons acting in concert or participating with them, from selling, attempting to sell, or causing to be sold the property, either under the power of sale in the deed of trust/mortgage or by foreclosure action;
- 2. A declaration by the court that sale of the property to enforce the deed of trust/mortgage is improper in that plaintiff has raised a claim that the defendant’s do not legally hold the note or deed of trust and/or do not have right to foreclose on the subject property;
- 3. Costs of suit; and
- 4. Any further relief that the court may deem just and equitable.

Dated _____

[Signature]
Attorney for Plaintiff

VERIFICATION

I am the plaintiff in this action. I have read the foregoing complaint and it is true of my own knowledge, except as to those matters stated on information or belief, and as to those matters, I believe it to be true.

I declare under penalty of perjury under the laws of the State of NEW YORK that the foregoing is true and correct.

Date of execution: _____

PLAINTIFF

NOTARY

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

[SEAL]