

11-12-2010

Trotter v. Bank of New York Mellon Clerk's Record Dckt. 38022

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LAW CLERK

Vol. / of

IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

VERMONT TROTTER

Plaintiff / Appellant

vs.

BANK OF NEW YORK MELLON F/K/A/ BANK OF
NEW YORK AS TRUSTEE FOR THE
CERTIFICATEHOLDERS OF CWALT, INC.
ALTERNATIVE LOAN TRUST 2005-28CB
MORTGAGE PASS-THROUGH CERTIFICATES
SERIES 2005-28CB; MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.; and
RECONTRUST COMPANY, N.A.,

Defendant / Respondent

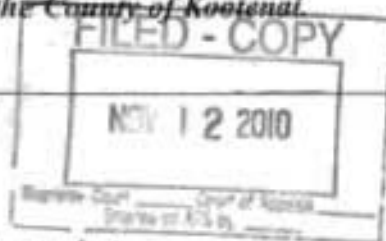
*Appealed from the District Court of the First Judicial District
of the State of Idaho, in and for the County of Kootenai.*

Lance Olsen
13555 SE 36th St, Ste 300
Bellevue, WA 98006

Attorney for Respondent

Vermont Trotter
512 S 14th St
Coeur d'Alene, ID 83814

Attorney for Appellant



38022

IN THE SUPREME COURT OF THE STATE OF IDAHO

)	
VERMONT TROTTER)	
)	
Petitioner/Plaintiff)	
)	
vs)	SUPREME COURT NO.
)	38022-2010
)	
BANK OF NEW YORK MELLON F/K/A)	
BANK OF NEW YORK AS TRUSTEE)	
FOR THE CERTIFICATEHOLDERS OF)	
CWALT, INC. ALTERNATIVE LOAN)	
TRUST 2005-28CB MORTGATE PASS-)	
THROUGH CERTIFICATES SERIES)	
2005-28CB; MORTGAGE ELECTRONIC)	
REGISTRATION SYSTEMS, INC.; and)	
RECONTRUST COMPANY, N.A.,)	
)	
Respondents/Defendants)	
_____)	

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the First Judicial District of the State of Idaho, in and for the County of Kootenai.

HONORABLE JOHN P. LUSTER
District Judge

Vernon Trotter
512 S 14th St
Coeur d'Alene, ID 83814

Lance Olsen
13555 SE 36th St, Ste 300
Bellevue, WA 98006

Attorneys for Appellants

Attorneys for Respondents

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

VERMONT TROTTER)
)
Petitioner/Plaintiff)
)
vs)
)
BANK OF NEW YORK MELLON F/K/A)
BANK OF NEW YORK AS TRUSTEE)
FOR THE CERTIFICATEHOLDERS OF)
CWALT, INC. ALTERNATIVE LOAN)
TRUST 2005-28CB MORTGATE PASS-)
THROUGH CERTIFICATES SERIES)
2005-28CB; MORTGAGE ELECTRONIC)
REGISTRATION SYSTEMS, INC.; and)
RECONTRUST COMPANY, N.A.,)
)
Respondents/Defendants)
_____)

SUPREME COURT NO.
38022-2010

Attorney for Appellant

Vermont Trotter
512 S 14th St
Coeur d'Alene, ID 83814

Attorneys for Respondents

Lance Olsen
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IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at
Kootenai, Idaho this 12 day of October, 2010

DANIEL J. ENGLISH
Clerk of the District Court

By: Debra D. Leu
Deputy Clerk

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Vermont Trotter vs. Bank of New York Mellon, Recontrust Company NA

Date	Code	User		Judge
1/6/2010	NCOC	SHEDLOCK	New Case Filed - Other Claims	Lansing L. Haynes
		SHEDLOCK	Filing: A - All initial civil case filings of any type not listed in categories B-H, or the other A listings below Paid by: Trotter, Vermont (plaintiff) Receipt number: 0000524 Dated: 1/6/2010 Amount: \$88.00 (Credit card) For: Trotter, Vermont (plaintiff)	Lansing L. Haynes
		SHEDLOCK	Filing: Technology Cost - CC Paid by: Trotter, Vermont (plaintiff) Receipt number: 0000524 Dated: 1/6/2010 Amount: \$3.00 (Credit card) For: Trotter, Vermont (plaintiff)	Lansing L. Haynes
	AFFD	HUFFMAN	Affidavit of Vermont Trotter in Support of Motion for Temporary Restraining Order to Cancel Trustee's Sale Scheduled for January 11, 2010	Lansing L. Haynes
	MISC	HUFFMAN	Rule 65 Affidavit	Lansing L. Haynes
	MOTN	HUFFMAN	Plaintiff's Motion For Temporary Restraining Order to Cancel Trustee's Sale Scheduled for January 11, 2010	Lansing L. Haynes
1/8/2010	HRSC	SVERDSTEN	Hearing Scheduled (Order to Show Cause 01/21/2010 03:30 PM) Flood Brennan	Lansing L. Haynes
1/15/2010	BNDC	SREED	Bond Posted - Cash (Receipt 1861 Dated 1/15/2010 for 1000.00)	Lansing L. Haynes
1/19/2010	MOTN	LEU	Motion For Limited Admission Of Non-Resident counsel Pro Hac Vice	Lansing L. Haynes
1/21/2010		RICKARD	Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Routh Crabtree Olsen, P.S. Receipt number: 0002578 Dated: 1/21/2010 Amount: \$58.00 (Check) For: Bank of New York Mellon (defendant) and Recontrust Company NA (defendant)	Lansing L. Haynes
	DCHH	SVERDSTEN	Hearing result for Order to Show Cause held on 01/21/2010 03:30 PM: District Court Hearing Held Court Reporter: LAURIE JOHNSON Number of Transcript Pages for this hearing estimated: Flood Brennan LANCE OLSEN APPEARING TELEPHONICALLY 425-586-1905 (Melissa 586-1925)	Lansing L. Haynes
1/29/2010	ORDR	LEU	Order For Limited Admission Of Non-Resident Counsel Pro Hac Vice	Lansing L. Haynes
2/5/2010	ORDR	JOKELA	Order Granting a Temporary Restraining Order from the Sale of Property	Lansing L. Haynes
2/8/2010	ANSW	SREED	Defendants Bank of New York Mellon, Mortgage Electronic Registration Systems Inc., and Reconstruct Company's Answer to Plaintiff's Complaint - Lance Olsen OBO Defendants	Lansing L. Haynes
2/16/2010	HRSC	SVERDSTEN	Hearing Scheduled (Status Conference 04/28/2010 03:30 PM)	Lansing L. Haynes
		SVERDSTEN	Notice of Hearing	Lansing L. Haynes

Vermont Trotter vs. Bank of New York Mellon, Recontrust Company NA

Date	Code	User		Judge
2/16/2010	NTSV	COCHRAN	Notice Of Service	Lansing L. Haynes
4/2/2010	HRSC	SVERDSTEN	Hearing Scheduled (Motion to Dismiss 05/26/2010 03:30 PM) Olsen	Lansing L. Haynes
4/12/2010	MNDS	PARKER	Defendants' Motion To Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted	Lansing L. Haynes
	MEMO	PARKER	Defendants' Memorandum of Law in Support of Motion to Dismiss	Lansing L. Haynes
	NOTH	PARKER	Notice Of Hearing	Lansing L. Haynes
4/14/2010	HRSC	SVERDSTEN	Hearing Scheduled (Motion to Compel 05/12/2010 03:30 PM) Flood-Brennan	Lansing L. Haynes
4/15/2010	MISC	CRUMPACKER	Response to Status Conference Notice	Lansing L. Haynes
4/28/2010	HRVC	SVERDSTEN	Hearing result for Motion to Compel held on 05/12/2010 03:30 PM: Hearing Vacated Flood-Brennan	Lansing L. Haynes
	HRSC	SVERDSTEN	Hearing Scheduled (Motion to Compel 05/21/2010 08:00 AM) Flood-Brennan	Lansing L. Haynes
	DCHH	SVERDSTEN	Hearing result for Status Conference held on 04/28/2010 03:30 PM: District Court Hearing Held Court Reporter: LAURIE JOHNSON Number of Transcript Pages for this hearing estimated:	Lansing L. Haynes
4/29/2010	HRSC	SVERDSTEN	Hearing Scheduled (Court Trial Scheduled 01/18/2011 09:00 AM) 1 DAY	Lansing L. Haynes
		SVERDSTEN	Notice of Trial	Lansing L. Haynes
5/12/2010	HRSC	SVERDSTEN	Hearing Scheduled (Motion to Compel 05/26/2010 03:30 PM) Flood-Brennan	Lansing L. Haynes
	HRVC	SVERDSTEN	Hearing result for Motion to Compel held on 05/21/2010 08:00 AM: Hearing Vacated Flood-Brennan	Lansing L. Haynes
	MEMO	COCHRAN	Plaintiff's Memorandum of Law in Opposition to Defendants' Motion to Dismiss	Lansing L. Haynes
5/13/2010	NOHG	LEU	Notice Of Hearing	Lansing L. Haynes
	MNCL	LEU	Motion To Compel	Lansing L. Haynes
	AFFD	LEU	Affidavit Of Monica Flood Brennan In Support Of Motion To Compel	Lansing L. Haynes
5/18/2010	ANSW	LEU	Defendants' Response To Plaintiff's Motion To Compel Production Of Documents	Lansing L. Haynes
	ANSW	LEU	Defendants' Reply To Plaintiff's Memorandum Of Law In Opposition To Defendants' Motion To Dismiss	Lansing L. Haynes

Vermont Trotter vs. Bank of New York Mellon, Recontrust Company NA

Date	Code	User		Judge
5/26/2010	DCHH	SVERDSTEN	Hearing result for Motion to Dismiss held on 05/26/2010 03:30 PM: District Court Hearing Held TAKEN UNDER ADVISEMENT Court Reporter: LAURIE JOHNSON Number of Transcript Pages for this hearing estimated: Olsen	Lansing L. Haynes
	DCHH	SVERDSTEN	Hearing result for Motion to Compel held on 05/26/2010 03:30 PM: District Court Hearing Hel Court Reporter: LAURIE JOHNSON Number of Transcript Pages for this hearing estimated: Flood-Brennan	Lansing L. Haynes
7/2/2010	MEMO	SVERDSTEN	Memorandum Decision, Findings of Fact & Conclusions of Law and Order Re: Defs' Motion to Dismiss and Plt's Motion to Compel	Lansing L. Haynes
7/16/2010	HRVC	SVERDSTEN	Hearing result for Court Trial Scheduled held on 01/18/2011 09:00 AM: Hearing Vacated 1 DAY	Lansing L. Haynes
7/19/2010	CVDI	LEU	Civil Disposition entered for: Bank of New York Mellon, Defendant; Recontrust Company NA, Defendant; Trotter, Vermont, Plaintiff. Filing date: 7/19/2010	Lansing L. Haynes
	FJDE	LEU	Final Judgement, Order Or Decree Entered	Lansing L. Haynes
8/27/2010		VICTORIN	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Trotter, Vermont (plaintiff) Receipt number: 0037622 Dated: 8/27/2010 Amount: \$101.00 (Check) For: Trotter, Vermont (plaintiff)	Lansing L. Haynes
	BNDC	VICTORIN	Bond Posted - Cash (Receipt 37626 Dated 8/27/2010 for 100.00)	Lansing L. Haynes
	APSC	VICTORIN	Appealed To The Supreme Court	Lansing L. Haynes
9/1/2010	MISC	VICTORIN	Clerk's Certificate of Appeal sent to Boise 8/31/2010	Lansing L. Haynes
9/15/2010	MISC	RICKARD	Amended Clerk's Certificate Of Appeal	Lansing L. Haynes
9/20/2010	NOTC	CLEVELAND	AMENDED Notice of Appeal	Lansing L. Haynes
	MOTN	CLEVELAND	Motion to Withdraw and Plaintiff/Appellant to Obtain Other Counsel or Appear Pro SE	Lansing L. Haynes
10/4/2010	NOTC	LEU	Notice Of Substitution Of Appellant/Plaintiff Pro Se	Lansing L. Haynes
10/5/2010	MOTN	RICKARD	Motion For Stay Of Execution	Lansing L. Haynes

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STATE OF IDAHO }
COUNTY OF KOOTENAI } SS
FILED:
#524
2010 JAN -6 PM 1:50

Jeff Barnes, Esq. (to apply for admission *pro hac vice*)
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Nevada office: c/o International Mediation Associates, Inc.
6655 West Sahara Avenue, Suite B200
Las Vegas, Nevada 89146
Tel: (702) 222-3202

CLERK DISTRICT COURT
Dina Sheeloch
DEPUTY

*No Summons
Issued*

Attorneys for Plaintiff

ORIGINAL

**IN THE FIRST DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IADHO IN AND FOR THE COUNTY OF KOOTENAI**

VERMONT TROTTER

Plaintiff,

v.

BANK OF NEW YORK MELLON F/K/A BANK
OF NEW YORK AS TRUSTEE FOR THE
CERTIFICATEHOLDERS OF CWALT, INC.
ALTERNATIVE LOAN TRUST 2005-28CB
MORTGAGE PASS-THROUGH CERTIFICATES)
SERIES 2005-28CB; MORTGAGE ELECTRONIC)
REGISTRATION SYSTEMS, INC.; and)
RECONTRUST COMPANY, N.A.,)

Defendants.

) CIVIL NO: 200-95

) **COMPLAINT FOR DECLARATORY**
) **AND INJUNCTIVE RELIEF AND TO**
) **CANCEL TRUSTEE'S SALE**
) **SCHEDULED FOR**
) **JANUARY 11, 2010**

Plaintiff VERMONT TROTTER, by and through his undersigned attorneys, sues Defendants BANK OF NEW YORK MELLON F/K/A BANK OF NEW YORK AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF CWALT, INC. ALTERNATIVE LOAN TRUST 2005-28CB MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2005-28CB; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.; and

RECONTRUST COMPANY, N.A. for Declaratory and Injunctive Relief and to Cancel a Trustee's Sale scheduled for January 11, 2010, and as grounds states:

A. Parties and Jurisdiction

1. Plaintiff VERMONT TROTTER is and was at all times material hereto a *sui juris* resident of the State of Idaho and over the age of eighteen (18), and is the legal owner of the residential real property identified herein *infra*.

2. Defendant BANK OF NEW YORK MELLON F/K/A BANK OF NEW YORK AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF CWALT, INC. ALTERNATIVE LOAN TRUST 2005-28CB MORTGAGE PASS-THROUGH CERTIFICATES (hereafter "BONY") is and was at all times material hereto a Wall Street banking institution which is, in the instant case, functioning as an alleged "Trustee" of a securitized mortgage loan trust (CWALT, Inc. Alternative Loan Trust 2005-28CB) which was established, pursuant to rules and regulations of the Securities Exchange Commission, in connection with the marketing and sale of certain mortgage-backed securities ("CWALT, Inc. mortgage pass-through certificates").

3. Defendant MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. (hereafter "MERS") is and was at all times material hereto a Delaware corporation with its principal place of business being located in Flint, Michigan which operates as a "tracking system" for mortgages which were sold, aggregated, and resold, in "bundles", to investment banks for ultimate placement within various "tranches" within a securitized mortgage loan trust incident to the securitization of mortgage loans in connection with the formation of exotic investment products known as Special Purpose Vehicles (SPVs) and/or Special Investment Vehicles (SIVs) in the form of Collateralized Debt Obligations

(CMOs), Collateralized Mortgage Obligations (CMOs), or other form of mortgage-backed securities (MBS) and/or in connection with one or more Credit Default Swaps (CDS).

4. Defendant RECONTRUST COMPANY, N.A. (hereafter "RC") is and was at all times material hereto a foreign corporation which maintained an office for the conduct of regular business at 1800 Tapo Canyon Road, CA6-914-01-94, Simi Valley, California 80028-1821 which, among other operations, schedules and conducts Trustee's Sales of residential real property incident to non-judicial foreclosure proceedings.

5. The residential real property the subject of this action is located at 512 South 14th Street, Coeur D'Alene, Idaho 83814 and is legally described as Lot 13 in Block 11 of Lakeshore Addition to Coeur D'Alene, according to the official plat thereof, filed in Book B of Plats at page 128, official records of Kootenai County, Idaho (hereafter the "Property"), which Property is the Plaintiff's primary residence.

6. This action is property brought in this Court as the Property is situate in Kootenai County, and as the relief requested herein is made pursuant to Idaho Statutes Title 10 and Idaho Rule of Civil Procedure 65.

B. Material Facts Common to All Counts

7. On or about June 17, 2005, Plaintiff executed a Note and Deed of Trust (hereafter the "mortgage loan" unless otherwise identified) in favor of non-party Countrywide Home Loans, Inc., a New York corporation with its address being 4500 Park Granada, Calabasas, California (hereafter "CTW").

8. The Deed of Trust identified Defendant MERS as being the "Beneficiary" under the Deed of Trust.

9. Some time thereafter, CTW transferred the servicing rights to the mortgage loan to non-party BAC Home Loans Servicing, LP, a subsidiary of Bank of America, N.A. located in Simi Valley, California.

9. On or about August 24, 2009, Defendant RC recorded and mailed to Plaintiff a "Notice of Default" (copy attached hereto marked Exhibit "A" and incorporated herein by reference) which claimed that Defendant BONY was the "Beneficiary" under the Deed of Trust.

10. The Notice of Default was accompanied by a document styled "Appointment of Successor Trustee" (hereafter the "Appointment", copy attached hereto marked Exhibit "B" and incorporated herein by reference) by which Defendant BONY, as "Attorney in Fact" purported to appoint Defendant RC as "successor trustee". The Appointment also identified Defendant BONY as the "Beneficiary" under the Deed of Trust.

11. Defendant RC, as "Successor Trustee", thereafter generated and sent to Plaintiff a "Notice of Trustee's Sale" (copy attached hereto marked Exhibit "C" and incorporated herein by reference) by which Defendant RC has scheduled the Property for Trustee's Sale to take place on January 11, 2010. The Notice of Trustee's Sale identifies Defendant MERS as the "Beneficiary" under the Deed of Trust.

12. Plaintiff has never been provided with any Assignment or other document demonstrating the transfer of the full and unencumbered interest in both the Note and the Deed of Trust from the original lender (non-party CTW) to any person or entity, and has no knowledge how Defendant BONY allegedly came to be the "Beneficiary" under the Deed of Trust when Defendant BONY was never identified therein.

13. Plaintiff also has no knowledge of who the present owner of the Note is as Plaintiff has never been provided with any evidence or documentation as to the transfer of the full and unencumbered interest in the Note from the original lender (non-party CTW) to any person or entity.

14. The fact that BONY is the alleged Trustee of a securitized mortgage loan trust and claims in the Notice of Default and Appointment (inconsistently with the Notice of Trustee's Sale) that it is the alleged "Beneficiary" under the Deed of Trust demonstrates that the Plaintiff's mortgage was sold, in parsed fashion by the original lender (CTW), for the purpose of same serving as collateral for and being assigned to one or more tranches within a SPV or SIV in the form of a CMO, CDO, or other form of MBS and/or for the purpose of being assigned to one or more CDS. As such, the true owner(s) of the full and unencumbered interest in both the Note and Deed of Trust are unknown.

15. Further, the securitized loan trust into which the Plaintiff's loan was placed is, on information and belief collateralized by, *inter alia*, hundreds if not thousands of other mortgage obligations in addition to other collateral requirements and credit enhancement protections (including credit default swaps) required by the rules and regulations of the SEC incident to the formation of the securitized mortgage loan trust and the marketing and sale of the MBS collateralized in part by the trust.

16. The credit enhancements of the securitized mortgage loan trust into which the Plaintiff's mortgage loan was placed take the form of various types of insurances which insure against the risk of borrower default. As such (and especially in view of the Notice of Default identifying the securitized mortgage loan trust), there may not be any

default which would give rise to a foreclosure action and sale, as the Plaintiff's loan obligation may have been liquidated in whole or in part through the payment of benefits through one or more of the credit enhancements/insurances available to the securitized mortgage loan trust.

17. As a severance of the ownership and possession of the original Note and Deed of Trust has occurred and as the true owner and holder of both the original Note and Deed of Trust are unknown (especially considering the inconsistent allegations of who the alleged present "Beneficiary" is under the Deed of Trust as evidenced by the Notice of Default, Appointment, and Notice of Trustee's Sale); as Defendant RC never acquired any interest in either the Note or the Deed of Trust; and further as a result of one or more assignments and the parsed sale of certain rights under the Note and Deed of Trust, Defendants are legally precluded from foreclosing on the Property unless and until they can demonstrate full legal standing to do so.

COUNT I: EMERGENCY TEMPORARY AND PERMANENT INJUNCTIVE RELIEF

18. Plaintiff reaffirms and realleges paragraphs 1 through 17 hereinabove as if set forth more fully hereinbelow.

19. This is an action for emergency temporary and permanent injunctive relief which is brought pursuant to applicable law and Idaho Rule of Civil Procedure 65.

20. Rule 65(b) expressly provides that a temporary restraining order may be granted without written or oral notice to the adverse party or the party's attorney if it clearly appears by affidavit that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or the adverse party's attorney can be heard in opposition, and the applicant's attorney certified to the Court in writing the

efforts, if any, which have been made to give the notice and the reasons supporting the party's claim that notice should not be required.

21. Plaintiff files, simultaneously with this Complaint, his Affidavit demonstrating irreparable harm if a temporary restraining order is not granted and his counsel's Rule 65 Certification as well.

22. Plaintiff has a clear legal right to seek temporary and permanent injunctive relief as Plaintiff resides in the Property and as Defendants are seeking, without satisfying the necessary legal standing requirements and without any evidence that they own the full and unencumbered interest in either the Note or the Deed of Trust, to institute a foreclosure sale; to take possession, custody, and control of the Property; and ultimately remove the Plaintiff from his home.

23. Plaintiff has no adequate remedy at law to redress the harm complained of, and the sale of the Plaintiff's property, under the circumstances of record, is contrary to law, equity, and good conscience in that such sale is being instituted by parties who have no legal standing to institute or maintain the foreclosure *ab initio*.

24. The specific facts set forth in this Complaint and supporting Affidavit demonstrate that unless an emergency temporary injunction against the foreclosure sale presently scheduled for Monday, January 11, 2010 is not granted that Plaintiff will suffer the irreparable injury, loss, and damage of the loss of his home and eviction therefrom.

25. As Defendants have no legal standing to institute or maintain a foreclosure of the Property, there is no harm to said Defendants with the granting of the requested

relief, and any claimed harm is substantially outweighed by the irreparable harm to the Plaintiff if the relief requested herein is not granted.

26. The granting of the relief requested herein is in the public interest, as the consuming public, including Plaintiff, will continue to be harmed by the illegal and unlawful conduct of the Defendants if the relief requested herein is not granted.

27. As Defendants have failed to demonstrate that they legally or lawfully acquired the full and unencumbered interest in either the Note or the Deed of Trust, Plaintiff has a substantial likelihood of success on the merits.

28. Under the circumstances where Defendants have not demonstrated any legal interest in either the Note or the Deed of Trust, there is no harm to Defendants with the granting of the requested relief, and thus only minimal security should be required of Plaintiff as a prerequisite to the granting of the relief requested herein and in order to satisfy the requirements of Idaho Rule of Civil Procedure 65(c), as there are no costs or other damages which could be contemplated on the part of Defendants with the granting of the requested relief for which more substantial security would otherwise be necessary.

WHEREFORE, Plaintiff respectfully requests that this Court immediately take jurisdiction of this matter and enter an Order granting temporary and permanent injunctive relief expressly precluding and cancelling the foreclosure sale presently scheduled for January 11, 2010 for the reasons set forth herein, and for any other and further relief which is just and proper.

COUNT II: DECLARATORY RELIEF

29. Plaintiff reaffirms and realleges paragraphs 1 through 17 hereinabove as if set forth more fully hereinbelow.

30. This is an action for declaratory relief which is being brought pursuant to Idaho Statutes Title 10, Chapter 12 (Declaratory Judgments) to declare that Defendants have no legal or equitable rights in the Note or Deed of Trust for purposes of foreclosure and that said Defendants have no legal standing to institute or maintain foreclosure on the Property, and to further permit Plaintiff to seek permanent injunctive relief forever barring Defendants from ever seeking to foreclose on the Property.

31. Pursuant to Idaho Statutes 10-1202, any person interested under a deed, will, written contract, or other writings constituting a contract or any oral contract or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status, or other legal relations thereunder.

32. Pursuant to Idaho Statutes 10-1203, a contract may be construed either before or after there has been a breach thereof.

33. Idaho Statutes 10-1212 provides that the act is declared to be remedial and that its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations, and is to be liberally construed and administered.

34. Idaho Statutes 10-1205 provides that the enumeration in sections 10-1202 and 10-1204 does not limit or restrict the exercise of the general powers conferred in

section 10-1201 in any proceedings where declaratory relief is sought in which a judgment or decree will terminate the controversy or remove an uncertainty.

35. Plaintiff and Defendants are "persons" within the meaning and definition of "person" pursuant to Idaho Statutes 10-1213.

36. Plaintiff is a person who has an interest under a deed and written contracts and instruments and whose rights, status, or other legal relations are affected by the contracts, and Plaintiff may thus have determined any question of construction or validity arising under the instruments and contracts and obtain a declaration of rights, status, or other legal relations thereunder.

37. In view of the fact that:

(a) the Note and Deed of Trust were not executed in favor of any of the Defendants; and

(b) the Defendants are seeking to foreclose on the Plaintiff's residential real property without any demonstrated interest in either the Note or the Deed of Trust; and

(c) there is an inconsistency as to who the alleged present "Beneficiary" is under the Deed of Trust as evidenced by the Defendants' Notice of Default, Appointment, and Notice of Trustee's Sale; and

(d) one of the claimed "Beneficiaries" is a securitized mortgage loan trust, the Plaintiff is in doubt and is uncertain as to his rights under the Note and Deed of Trust contracts; his legal rights and relations with respect to such contracts has been apparently altered by the actions of the Defendants; and Plaintiff is legally entitled, through this action for Declaratory Relief, to have such doubt and uncertainty removed.

38. Pursuant to Idaho Statutes 10-1208, Plaintiff is entitled to further relief based on this action for a Declaratory Judgment, and Plaintiff has asserted such further relief in Count I of this Complaint for Temporary and Permanent Injunctive Relief, which has been asserted as necessary and proper to preserve the status quo during the pendency of and through the full disposition of the merits of this proceeding.

39. As the disposition of this action on the merits will require the determination of multiple issues of fact, the trial of such issues of fact are, pursuant to Idaho Statutes 10-1209, to be in the same manner as issues of fact are tried in determined in other actions at law, and Plaintiff thus demands trial by jury of all issues of fact.

40. Plaintiff also demands an award of costs pursuant to Idaho Statutes 10-1210.

WHEREFORE, Plaintiff demands that the court adjudge:

- (a) that Defendants have no legal standing or the proper legal or equitable interest in either the Note or Deed of Trust to institute or maintain a foreclosure; and
- (b) that the attempt by Defendants to conduct a foreclosure sale of the Property is legally defective and precluded from enforcement; and
- (c) that the Plaintiff recover his costs as provided by law.

Dated this 6 day of January, 2010.

Jeff Barnes, Esq.
to seek admission *pro hac vice*
W. J. Barnes, P.A.
Nevada office, c/o Int'l Mediation Assoc., Inc.
6655 West Sahara Avenue, Suite B200
Las Vegas, Nevada 89146


MONICA FLOOD BRENNAN, ESQ.
608 Northwest Boulevard, Suite 101
Coeur D'Alene, Idaho 83814
Tel: (208) 665-0088

Attorneys for Plaintiff

133910



04 090120188
RECONTRUST COMPANY
1800 Tapo Canyon Rd., CA6-914-01-94
SIMI VALLEY, CA 93063

DANIEL J. ENGLISH 1P I 2228918000
KOOTENAI CO, RECORDER Page 1 of 1
RAA Date 08/24/2009 Time 15:28:28
REC-REQ OF PIONEER TITLE COMPANY
RECORDING FEE: 3.00
2228918000 MV 2

TS No. 09-0120188
Title Order No. 09090579
Parcel No. C54450110130

NOTICE OF DEFAULT

THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK AS TRUSTEE FOR THE CERTIFICATEHOLDERS CWALT,INC.ALTERNATIVE LOAN TRUST 2005-28CB MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-28CB, Beneficiary, under that certain Deed of Trust dated 06/17/2005, and executed by VERMONT R TROTTER, AN UNMARRIED MAN, as Trustor(s), to FIDELITY NATIONAL TITLE INS CO, as Trustee, and MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC, as Beneficiary, and recorded 06/24/2005, as Instrument No. 1959776, in the records of Kootenai County, Idaho, to wit:

LOT 13 IN BLOCK 11 OF LAKESHORE ADDITION TO COEUR D'ALENE, ACCORDING TO THE OFFICIAL PLAT THEREOF, FILED IN BOOK B OF PLATS AT PAGE(S) 121 OFFICIAL RECORDS OF KOOTENAI COUNTY, IDAHO.

hereby gives notice that a breach of the obligation for which said transfer is security has occurred, the nature of said breach being:

Failure to pay the monthly payment due 05/01/2009 of principal, interest and impounds and subsequent installments due thereafter; plus late charges; together with all subsequent sums advanced by beneficiary pursuant to the terms and conditions of said Deed of Trust, and any supplemental modifications thereto. As of 08/18/2009 this amount is \$5,762.88, together with any unpaid and /or accruing real property taxes, and/or assessments, attorneys' fees, Trustees' fees and costs, and any other amount advanced to protect the security of said Deed of Trust.

Therefore, the Beneficiary elects to sell or cause the trust property to be sold to satisfy said obligation.
NOTICE IS HEREBY GIVEN THAT THIS FIRM IS ATTEMPTING TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT P'POSE, AND THAT THE DEBT MAY BE DISPUTED.

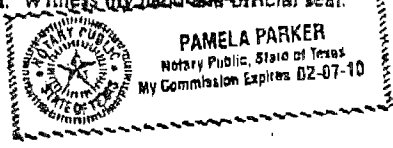
IN WITNESS WHEREOF, the Trustee, pursuant to a resolution of its Board of Directors, has caused its corporate name to be hereto subscribed this day.

Date: 08/18/2009 RECONTRUST COMPANY, N.A.

By: Sabrina Stephens, ~~Team Member~~
Assistant Secretary

Slate of ~~California~~ Texas)
County of Dallas) ss.

On Aug. 19, 2009, before me, Pamela Parker, notary public, personally appeared Sabrina Stephens Assistant Secretary personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) acted, executed the instrument. Witness my hand and official seal.



Notary Public Form idnod (02/02)

Exhibit "A"

012

01/05/2010 18:38 7028048137 WJBARNESPA PAGE 03/04

133910

When Recorded Mail to
BAC Home Loans Servicing, LP
Attn: Foreclosure (Idaho)
400 COUNTRYWIDE WAY SV-35
SIMI VALLEY, CA 93065

DANIEL J. ENGLISH 1F I 2228917000
KOOTENAI CO. RECORDER Page 1 of 1
RAR Date 08/24/2009 Time 15:28:20
REC-REQ OF PIONEER TITLE COMPANY
RECORDING FEE: 3.00
2228917000 MP 2

Doc ID. Doc ID #0001008409962005N
T.S. No. 09-0120188
Title Order No. 090590579
Parcel No. C54450110130

APPOINTMENT OF SUCCESSOR TRUSTEE

RECONTRUST COMPANY, N.A., whose address is 1800 Tapo Canyon Rd., CA6-914-01-94
SIMI VALLEY, CA 93063, is hereby appointed Successor Trustee under that certain Deed of Trust dated 06/17/2005, wherein
VERMONT R TROTTER, AN UNMARRIED MAN, is/are the Grantor(s), and FIDELITY NATIONAL TITLE INS CO, is
the Trustee, and MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC, is the Beneficiary, and recorded
06/24/2005, as Instrument No. 1959776, records of Kootenai County, Idaho, and covering the following real property:

LOT 13 IN BLOCK 11 OF LAKESHORE ADDITION TO COEUR D'ALENE, ACCORDING TO THE OFFICIAL
PLAY THEREOF, FILED IN BOOK B OF PLATS AT PAGE(S) 128 OFFICIAL RECORDS OF KOOTENAI
COUNTY, IDAHO.

The original Trustee has ceased to act as Trustee, and THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW
YORK AS TRUSTEE FOR THE CERTIFICATEHOLDERS CWALT, INC. ALTERNATIVE LOAN TRUST 2005-28CB
MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-28CB, who is the present Beneficiary under said Deed of
Trust, desires to appoint a new Trustee in the place and stead of the original Trustee named above, and to have all the powers
of the original Trustee, effective forthwith, in accordance with 45-1504, Idaho Code.

IN WITNESS WHEREOF, the Beneficiary, pursuant to a resolution of its Board of Directors, has caused its corporate name to
be hereto subscribed this day.

Dated: 8/18/09

THE BANK OF NEW YORK MELLON FKA THE BANK OF
NEW YORK AS TRUSTEE FOR THE
CERTIFICATEHOLDERS CWALT, INC. ALTERNATIVE
LOAN TRUST 2005-28CB MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2005-28CB, as Attorney-in-fact

Judy Acquaye
Judy Acquaye Assistant Secretary

State of Texas)
County of Dallas) ss.

On Aug. 19, 2009, before me, Pamela Parker, notary public, personally appeared
Judy Acquaye Assistant Secretary, personally known to me (or proved to me on the basis of satisfactory evidence) to be
the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the
same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity
upon behalf of which the person(s) acted, executed the instrument.
Witness my hand and official seal.

Pamela Parker
Notary Public

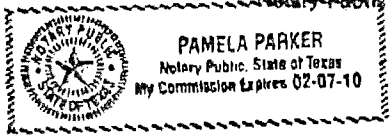


Exhibit "B"

01/05/2010 18:38 7028048137

WJBARNESPA

PAGE 04/04

TS No. 09-0120188
Title Order No. 090590579IDGNO
Parcel No. C54450110130

NOTICE OF TRUSTEE'S SALE

The following described property will be sold at public auction to the highest bidder, payable in lawful money of the United States, in the lobby of Pioneer Title Company of Kootenai County located at 100 Wallace Avenue, Coeur d'Alene, ID 83814, on 01/11/2010 at 11:00 am, (recognized local time) for the purpose of foreclosing that certain Deed of Trust recorded 06/24/2005 as Instrument Number 1959776, and executed by VERMONT R. TROTTER, AN UNMARRIED MAN, as Grantor(s), in favor of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC, as Beneficiary, to RECONTRUST COMPANY, N.A., the Current Trustee of record, covering the following real property located in Kootenai County, state of Idaho:

LOT 13 IN BLOCK 11 OF LAKESHORE ADDITION TO COEUR D'ALENE, ACCORDING TO THE OFFICIAL PLAT THEREOF, FILED IN BOOK B OF PLATS AT PAGE(S) 121 OFFICIAL RECORDS OF KOOTENAI COUNTY, IDAHO.

The Trustee has no knowledge of a more particular description of the above referenced real property, but for purpose of compliance with Idaho Code, Section 60-113, the Trustee has been informed that the street address of, 512 SOUTH 14TH STREET, COEUR D'ALENE, ID 83814 is sometimes associated with said real property.

Bidders must be prepared to tender the trustee the full amount of the bid at the sale in the form of cash, or a cashier's check drawn on a state or federally insured savings institution. Said sale will be made without covenant or warranty, express or implied, regarding title, possession or encumbrances to satisfy the obligation secured by and pursuant to the power of sale conferred in that certain Deed of Trust.

The default for which this sale is to be made is:
Failure to pay the monthly payment due 05/01/2009 of principal, interest and impounds and subsequent installments due thereafter, plus late charges, with interest currently accruing at 6.250% per annum; together with all subsequent sums advanced by beneficiary pursuant to the terms and conditions of said Deed of Trust, and any supplemental modifications thereto. The principal balance owing as of this date on said obligation is \$138,003.65, plus interest, costs and expenses actually incurred in enforcing the obligations thereunder and in this sale, together with any unpaid and /or accruing real property taxes, and/or assessments, attorneys' fees, Trustees' fees and costs, and any other amount advanced to protect said security, as authorized in the promissory note secured by the aforementioned Deed of Trust.

Therefore, the Beneficiary elects to sell, or cause said trust property to be sold, to satisfy said obligation.

NOTICE IS HEREBY GIVEN THAT THIS FIRM IS ATTEMPTING TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE, AND THAT THE DEBT MAY BE DISPUTED. THE ABOVE GRANTORS ARE NAMED TO COMPLY WITH SECTION 45-1506(4)(b) IDAHO CODE. NO REPRESENTATION IS MADE THAT THEY ARE, OR ARE NOT, PRESENTLY RESPONSIBLE FOR THIS OBLIGATION.

DATED: 09/02/2009

RECONTRUST COMPANY, N.A.

Name and Address of the Current Trustee is:
RECONTRUST COMPANY, N.A.
1800 Tapo Canyon Rd., CA6-914-01-94
SIMI VALLEY, CA 80028-1821
PHONE: (800) 281-8219

Successor Trustee



/S/ Deedra Williams

Exhibit A AC 11

MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2005-28CB; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.; and RECONTRUST COMPANY, N.A. came on for ^{ex parte} hearing at in the a.m. of Jan. 8th ~~a.m./p.m. on~~ _____, 2010. in ~~Kootenai County Judicial District Court. Monica Flood-Brennan, Esq. appeared as counsel for Plaintiff VERMONT TROTTER, and Defendants did/did not make an appearance as follows:~~ _____.

The Court having read and considered the *ex parte* application filed by the Plaintiff, the Complaint and Affidavit in support thereof and the applicable Idaho Statutes and Idaho Rules of Civil Procedure cited, and good cause appearing therefore,

IT IS HEREBY ORDERED that Defendants BANK OF NEW YORK MELLON F/K/A BANK OF NEW YORK AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF CWALT, INC. ALTERNATIVE LOAN TRUST 2005-28CB MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2005-28CB; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.; and RECONTRUST COMPANY, N.A. and their officers, agents, employees, representatives, and all persons acting in concert or participating with them are enjoined, through January 22, 2010, from:

1. Conducting or otherwise proceeding with any Trustee's Sale or other manner of attempted sale of the real property located at 512 South 14th Street, Coeur D'Alene, Idaho 83814 and legally described as Lot 13 in Block 11 of Lakeshore Addition to Coeur D'Alene, according to the official plat thereof, filed in Book B of Plats at page 128, official records of Kootenai County, Idaho (hereafter the "Property"); and
2. from selling, transferring, encumbering, or conveying title to the subject Property pending further order of this Court.

IT IS FURTHER ORDERED that Defendants BANK OF NEW YORK MELLON F/K/A BANK OF NEW YORK AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF CWALT, INC. ALTERNATIVE LOAN TRUST 2005-28CB MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2005-28CB; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.; and RECONTRUST COMPANY, N.A. appear at 3:30 a.m. (p.m.) on Jan. 21, 2010 in Kootanai County District Court and show cause why they should not be enjoined, during the pendency of this action, from:

1. Conducting or otherwise proceeding with any Trustee's Sale or other manner of attempted sale of the real property located at 512 South 14th Street, Coeur D'Alene, Idaho 83814 and legally described as Lot 13 in Block 11 of Lakeshore Addition to Coeur D'Alene, according to the official plat thereof, filed in Book B of Plats at page 128, official records of Kootenai County, Idaho (hereafter the "Property"); and
2. from selling, transferring, encumbering, or conveying title to the subject Property.

IT IS FURTHER ORDERED that all opposing papers be filed and served by personal service, or by fax, no later than 5:00 p.m. on _____, 2010, and that any papers in reply may be filed and served by personal service, overnight mail, or by fax no later than 5:00 p.m. on _____, 2010.

Dated this 8th day of January, 2010. at 11:25 a.m.

This Court specifically finds that Plaintiff may lose his residence wrongfully without issuance of this temporary restraining order, and that said injury may be irreparable through the scheduled foreclosure sale. This Court finds that notice to the adverse parties was impractical under the circumstances of this record. Pursuant to I.R.C.P. 65(c), this temporary restraining order is conditioned on Plaintiff posting a One Thousand Dollars (\$1,000.00) security consistent with said rule.

Launing L. Haynes
DISTRICT COURT JUDGE

2010-5-11 3:05
Laural J. Keala

MONICA FLOOD BRENNAN, P.C.
ATTORNEY AT LAW
Spokesman Review Building
608 Northwest Boulevard, Suite 101
Coeur d'Alene, Idaho 83814
Telephone: 208-665-0088
Facsimile: 208-676-8288
Idaho State Bar No. 5324
Attorney for Plaintiff

Jeff Barnes, Esq.
Boca Raton, Florida Office
1515 North Fed. Hgwy., Suite 300
Boca Raton, FL 33432
Tele: 561-864-1067
Fax: 702-804-8137

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

VERMONT TROTTER,
Plaintiff,

vs.

BANK OF NEW YORK MELLON F/K/A/
BANK OF NEW YORK AS TRUSTEE
FOR THE CERTIFICATEHOLDERS OF
CWALT, INC. ALTERNATIVE LOAN
TRUST 2005-28CB MORTGAGE PASS
THROUGH CERTIFICATES SERIES
2005-28CB, MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC. AND
RECONTRUST COMPANY, N.A.,

Defendant.

Case No. CV2010-0095

ORDER GRANTING A TEMPORARY
RESTRAINING ORDER FROM THE
SALE OF PROPERTY

THIS MATTER having come before the Court upon the Motion of
Attorney, Monica Flood Brennan, and Pro Hac Vice counsel, Jeff
Barnes, for a Temporary Restraining Order preventing the

ORDER GRANTING A TEMPORARY
RESTRAINING ORDER FROM
THE SALE OF PROPERTY

foreclosure sale of the real property located at 512 South 14th Street, Coeur d'Alene, Idaho, the Court having heard oral argument in this matter on January 21, 2010 and having made an oral ruling thereon, and there being good cause appearing;

IT IS HEREBY ORDERED THAT:

1. The Plaintiff's motion for a Temporary Order Restraining the sale of the real property located at 512 South 14th Street, Coeur d'Alene, Idaho, legally described as Lot 13, Block 11 of Lakeshore Addition to Coeur d'Alene, according to the official plat thereof, filed in Book B of Plats at page 128, official records of Kootenai County, Idaho, is HEREBY GRANTED based upon the law set forth on the record herein, and a preliminary review of decisions set forth in Idaho and Nevada Federal Courts, and based upon all of the reasons announced verbally on the record. A written recitation of the Court's oral ruling will not follow.
2. The foreclosure sale of the above reference property herein currently scheduled for February 8, 2010, or whenever the sale is scheduled, is Temporarily Restrained and shall not be rescheduled without further order of the Court;
3. The \$1000 bond previously posted by the Plaintiff herein satisfies the legal requirements of Rule 65.

DATED this 5 of February, 2010.

Lansing L. Haynes
Honorable Lansing Haynes
District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 5 day of February, 2010, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

 US Mail

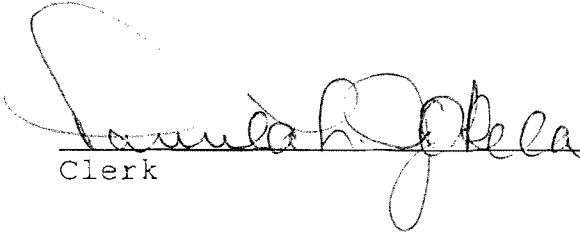
 Interoffice Mail

 Hand Delivered

 ✓ Facsimile (FAX)

Monica Flood Brennan
Attorney for Plaintiff
✓fax: 208-676-8288

Lance E. Olsen
Routh Crabtree Olson, P.S.
Attorney for MERS, et al
3535 Factoria Blvd. SE Suite 200
Bellevue, WA 98006
✓fax: 425-283-5905


Clerk

Lance E. Olsen, ISB No. 7106
ROUTH CRABTREE OLSEN, P.S.
3535 Factoria Blvd SE, Suite 200
Bellevue, WA 98006
Telephone: (425) 586-1905
Facsimile: (425) 283-5905

Attorneys for Defendants Bank of New York Mellon,
Mortgage Electronic Registration Systems, Inc. and
ReconTrust Company, N.A.

STATE OF IDAHO
COUNTY OF KOOTENAI
FILED: 5 SS

2010 FEB -8 AM 10: 20

CLERK DISTRICT COURT
Alan Reed
DEPUTY JR

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

VERMONT TROTTER,

Plaintiff,

vs.

BANK OF NEW YORK MELLON F/K/A
BANK OF NEW YORK AS TRUSTEE FOR
THE CERTIFICATEHOLDERS OF
CWALT, INC. ALTERNATIVE LOAN
TRUST 2005-28CB MORTGAGE PASS-
THROUGH CERTIFICATES SERIES 2005-
28CB; MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.; and
RECONTRUST COMPANY, N.A.

Defendants.

Case No. CV 2010-95

**DEFENDANTS BANK OF NEW
YORK MELLON, MORTGAGE
ELECTRONIC REGISTRATION
SYSTEMS, INC., AND
RECONTRUST COMPANY'S
ANSWER TO PLAINTIFF'S
COMPLAINT**

COMES NOW, Defendant Bank of New York Mellon f/k/a Bank of New York as Trustee for the Certificate holders of CWALT, Inc. alternative loan trust 2005-28CB Mortgage Pass-Through Certificates Series 2005-28CB, Mortgage Electronic Registration Systems, Inc. and ReconTrust Company, N.A. (Collectively hereafter "Defendants") by and through counsel of record, Lance E. Olsen of Routh Crabtree Olsen and answers the Complaint of Plaintiff as follows.

ORIGINAL

021

A. PARTIES AND JURISDICTION

1. Defendants admit that Plaintiff is a resident of the State of Idaho, over the age of eighteen, and the presently vested owner of the subject real property at 512 South Fourteenth Street, Coeur d'Alene, Idaho 83814.

2. As of the date of this answer, counsel for the Defendants has insufficient information to admit or deny the allegations concerning the business structure as alleged.

3. Defendants deny the allegations of paragraph three in that they are not accurate, overly vague, or statements of opinion improperly presented as fact.

4. Admitted

5. Admitted

6. Defendant assumes that paragraph 6 contains a typographical error but is intended to serve as an allegation of proper venue. For the purposes of this answer, Defendant denies that venue is proper based on certain allegations of claims made.

B. MATERIAL FACTS

7. Admitted

8. Admitted

9. Denied

9. Please note Plaintiff's error in listing two paragraph 9 with different allegations. Counsel for Defendants is in the process of gathering information but has insufficient information as of the date of this answer to admit or deny the allegations of the second paragraph 9.

10. Counsel for Defendants is in the process of gathering information but has insufficient information to admit or deny the allegations of paragraph 10.

11. Counsel for Defendants is in the process of gathering information but has

insufficient information as of the date of this answer to admit or deny the allegations of paragraph

11.

12. Denied

13. Denied

14. The allegations of paragraph 14 are argument, not facts, and are denied.

15. The allegations of paragraph 15 are not relevant to any cause of action, are argumentative or based on opinion, and denied for the purposes of this answer.

16. The allegations of paragraph 16 are argument and opinion and denied for the purposes of this answer.

17. Denied.

III. COUNT ONE – REQUEST FOR INJUNCTION

Paragraphs 18 through 28 refer to a request for injunction that has already been granted. To the extent that there are any relevant factual statements asserted they are denied for the purposes of this answer.

IV. COUNT TWO – DECLARATORY RELIEF

Paragraphs 29 through 40 are phrases as requests for relief but include a mix of argument, opinion and assertion of fact. For the purposes of this answer Defendants deny that Declaratory Relief is appropriate and deny the interpretation of statute and fact as presented in paragraphs 29 through 40.

V. AFFIRMATIVE DEFENSES

By way of further answer to the Complaint, and by way of affirmative defense, Defendants admit, deny and allege as follows:

1. The Complaint fails to state a claim upon which relief can be granted as to these Defendants.

2. Plaintiff has improperly sued certain defendants without any basis in law or fact for making the claim against them.

3. Plaintiff took a loan secured by a deed of trust and failed to make timely payments and is in default. The deed of trust contains the power of sale. Defendants, or some of them, are legally entitled to seek to sell the Property through a trustee's sale.

4. Plaintiff signed the deed of trust and other loan documents with actual or constructive knowledge of MERS' relationship to the other parties.

5. Plaintiff was fully advised of the nature of the transaction in which he participated and with full knowledge thereof participated in said transaction of which he now complains herein and by reason thereof Plaintiff's claims against the Defendants are barred by the doctrine of waiver and/or estoppel.

6. The allegations in the Complaint are vague, ambiguous and thus fail to properly put Defendants on notice of the specific factual allegations.

7. Defendants assert the defense of good faith, due care, and failure to directly, or indirectly, induce the alleged act, or acts, constituting the alleged violation or cause of action.

8. Plaintiff has failed to mitigate its damages, if any and to protect himself from avoidable consequences.

9. Defendants allege offset against any damages awarded to Plaintiff, based on the amounts due under the loan.

10. Defendants allege that Plaintiff's damages, if any, were proximately caused by Plaintiff's own actions or inactions and/or actions or inaction of others.

11. Defendants allege that some or all of the Plaintiff's claims against Defendants for violations of Idaho State law are barred under the doctrine of federal preemption.

12. Defendants allege that some or all of the Plaintiff's claims against Defendants are

frivolous, and Defendants are entitled to an award of their reasonable expenses, including attorneys' fees, in defending this case.

VI. RESERVATION OF ADDITIONAL DEFENSES

Because Defendants' investigation into the facts surrounding the events described in the Complaint have not been completed, Defendants cannot fully anticipate all affirmative defenses that may be applicable to the within action. Accordingly, the right to assert additional affirmative defenses, if and to the extent that such affirmative defenses are applicable, is hereby reserved.

VII. PRAYER FOR RELIEF

WHEREFORE, having fully answered Plaintiff's complaint, Defendants pray for relief as follows:

- (a) For dismissal of Plaintiff's complaint with prejudice;
- (b) For fees and costs against Plaintiff as may be appropriate
- (c) For leave to freely amend the pleadings to conform to the evidence; and
- (d) For such other and further relief as the court may deem proper.

DATED this 4 day of February, 2010.

ROUTH CRABTREE OLSEN, P.S.

By: 

Lance E. Olsen, ISB No. 7106
Attorneys for Defendant Bank of New
York Mellon, Mortgage Electronic
Registration Systems, Inc. and Recontrust
Company, N.A.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4 day of February, 2010, a true and correct copy of the foregoing document was served upon the following individuals, by the method indicated below, and addressed as follows:

- [**X**] U.S. Mail
- [] Hand Delivered
- [] Overnight Mail
- [] Facsimile

Monica Flood Brennan
608 Northwest Boulevard
Suite 101
Coeur D'Alene, ID 83814
Fax: 208-676-8288

Jeff Barnes
W.J. Barnes, P.A.
c/o International Mediation Associates, Inc.
6655 West Sahara Avenue
Suite B200
Las Vegas, NV 89146



Lance E. Olsen

STATE OF IDAHO
COUNTY OF KOOTENAI } SS
FILED

2010 MAY 13 AM 9:19

CLERK DISTRICT COURT
Debra J. [Signature]
DEPUTY *PB*

MONICA FLOOD BRENNAN, P.C.
ATTORNEY AT LAW
Spokesman Review Building
608 Northwest Boulevard, Suite 101
Coeur d'Alene, Idaho 83814
Telephone: 208-665-0088
Facsimile: 208-676-8288
Idaho State Bar No. 5324
Attorney for Plaintiff

Jeff Barnes, Esq.
1515 North Federal Highway,
Suite 300
Boca Raton, FL 33432
Tele: 561-864-1067
Fax: 702-804-8137
e-mail wjbarnes@cox.net

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

VERMONT TROTTER,

Plaintiff,

vs.

BANK OF NEW YORK MELLON F/K/A/
BANK OF NEW YORK AS TRUSTEE
FOR THE CERTIFICATEHOLDERS OF
CWALT, INC. ALTERNATIVE LOAN
TRUST 2005-28CB MORTGAGE PASS
THROUGH CERTIFICATES SERIES
2005-28CB, MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC. AND
RECONTRUST COMPANY, N.A.,

Defendant.

Case No. CV2010-095

MOTION TO COMPEL

COMES NOW the above named Plaintiff, Vermont Trotter, by and through his counsel of record, Monica Flood Brennan and Jeff Barnes, and moves this Court pursuant to Rule 37(a), Idaho Rules of Civil Procedure, for its order compelling the Defendants to fully and completely answer Interrogatories and respond to Request for Production of Documents dated February 16, 2010. Defendants still have not responded to any and all questions regarding whether they have title to the property, as will be set forth with more particularity in the affidavit attached hereto.

Plaintiff requests attorney fees in the amount of \$480.00, for expenses and services incurred as a result of the Defendant's failure to answer said Interrogatories and respond to said Request for Production of Documents. This motion is supported by the pleadings and file herein as well as the Affidavit of Monica Flood Brennan filed herewith. Oral argument is requested.

DATED this 13 day of May, 2010.

BY: Monica Flood Brennan
MONICA FLOOD BRENNAN
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 13 day of May, 2010, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

<input type="checkbox"/> US Mail	<input type="checkbox"/> Interoffice Mail
<input type="checkbox"/> Hand Delivered	<input checked="" type="checkbox"/> Facsimile (FAX)

Lance Olsen
Routh, Crabtree and Olsen
Attorneys for Defendants
FAX: 425-283-5905

Monica Flood Brennan
Monica Flood Brennan

1 Lance E. Olsen, ISB No. 7106
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8 Mortgage Electronic Registration Systems, Inc. and
9 Recontrust Company, N.A.

STATE OF IDAHO
COUNTY OF KOOTENAI } SS
FILED

2010 MAY 18 AM 9:54

CLERK DISTRICT COURT

Debra J. [Signature]
DEPT. [Signature]

7 **IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE**
8 **STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

9 VERMONT TROTTER,
10
11 Plaintiff,

Case No. CV 2010-95

12 vs.

**DEFENDANTS' RESPONSE TO
13 PLAINTIFF'S MOTION TO
14 COMPEL PRODUCTION OF
15 DOCUMENTS**

13 BANK OF NEW YORK MELLON F/K/A
14 BANK OF NEW YORK AS TRUSTEE FOR
15 THE CERTIFICATEHOLDERS OF
16 CWALT, INC. ALTERNATIVE LOAN
17 TRUST 2005-28CB MORTGAGE PASS-
18 THROUGH CERTIFICATES SERIES 2005-
19 28CB; MORTGAGE ELECTRONIC
20 REGISTRATION SYSTEMS, INC.; and
21 RECONTRUST COMPANY, N.A.

22 Defendants.

23 **INTRODUCTION AND REQUEST FOR RELIEF**

24 Bank of New York Mellon f/k/a Bank of New York as Trustee for the Certificate holders of
25 CWALT, Inc. alternative loan trust 2005-28CB Mortgage Pass-Through Certificates Series 2005-
26 28CB, Mortgage Electronic Registration Systems, Inc., and ReconTrust Company, N.A.
(Collectively hereafter "Defendants") respectfully request that the Court deny Plaintiff's Motion to
Compel and request for attorney fees pursuant to I.R.C.P. 37(a). Defendants hereby ask this Court
to award costs and attorney fees in their favor for responding to Plaintiff's unfounded claims.

1 Plaintiff's Motion is untimely. Additionally, Plaintiff's assertion that all documents
2 responsive to requests for production have not been tendered is without support. Plaintiff has also
3 not submitted any interrogatories to Defendants as asserted in the Motion to Compel. Therefore,
4 Defendants are not required to answer or explain the documents produced.
5

6 **ARGUMENT**

7 **A. THE MOTION TO COMPEL IS UNTIMELY**

8 I.R.C.P. 7(b)(3) requires that a written motion and supporting brief be served "so that it is
9 received by the parties no later than fourteen (14) days before the time specified for the hearing."

10 The hearing on Plaintiff's Motion to Compel is scheduled for May 26, 2010. Plaintiff
11 provided the Motion to Compel to Defendants' counsel via Facsimile (Fax) on May 13, 2010, as
12 shown on the certificate of service.
13

14 Therefore, Plaintiff's Motion violates I.R.C.P. 7(b)(3) and should be stricken.

15 **B. RESPONSE TO MOTIONS TO COMPEL**

16 Defendants have produced all documents requested by Plaintiff's Requests for Production.
17 See Exhibit 1, Verifications.

18 Notwithstanding the responses herein, Defendants maintain all objections noted in the
19 Responses to Plaintiff's Requests for Production. Defendants address each of Plaintiff's allegations,
20 as contained in Exhibit 1 to the Motion to Compel, as follows:
21

22 RESPONSE TO MOTION TO COMPEL NO. 1: Defendants object to Plaintiff's
23 assertion of non-responsiveness. Defendants produced the Corporation Assignment of Deed of
24 Trust in favor of Bank of New York Mellon recorded on August 24, 2009, and the Appointment
25 of Successor Trustee recorded on August 24, 2009. Defendants are currently unaware of any
26

1 other assignments related to the Deed of Trust.

2 RESPONSE TO MOTION TO COMPEL NO. 2: Defendants object to Plaintiff's
3 assertion of non-responsiveness. The Pooling and Servicing Agreement related to Countrywide
4 Home Loans Servicing LP, as Master Servicer, and Bank of New York Mellon f/k/a Bank of
5 New York as Trustee for the Certificateholders of CWALT, Inc. Alternative Loan Trust 2005-
6 28CB Mortgage Pass-Through Certificates Series 2005-28CB, consisting of 227 pages, is
7 publicly available at:

8 [http://www.sec.gov/Archives/edgar/data/1332080/000090514805004382/0000905148-05-](http://www.sec.gov/Archives/edgar/data/1332080/000090514805004382/0000905148-05-004382.txt)
9 [004382.txt](http://www.sec.gov/Archives/edgar/data/1332080/000090514805004382/0000905148-05-004382.txt). Plaintiff has not specifically requested an alternative form for production of this
10 record, pursuant to I.R.C.P. 34(b)(1).
11

12 RESPONSE TO MOTION TO COMPEL NO. 3: Defendants object to Plaintiff's
13 assertion of non-responsiveness. Defendants are currently unaware of any other assignments
14 related to the Pooling and Servicing Agreement referenced above.
15

16 RESPONSE TO MOTION TO COMPEL NO. 4: Defendants object to Plaintiff's
17 assertion of non-responsiveness. Defendants have produced the Note, Deed of Trust dated June
18 17, 2005, Corporation Assignment of Deed of Trust recorded on August 24, 2009, and
19 Appointment of Successor Trustee recorded on August 24, 2009. Defendants have established
20 enforceability of the security interest at issue in compliance with I.C. § 28-3-301 and I.C. § 45-15.
21

22 RESPONSE TO REQUESTS FOR PRODUCTION NO. 5, 6: Plaintiff appears satisfied
23 with Defendants' response to Requests for Production numbers 5 and 6.

24 RESPONSE TO MOTION TO COMPEL NO. 7: Defendants object to Plaintiff's
25 assertion of non-responsiveness. Defendants produced the loan origination file.
26

1 RESPONSE TO MOTION TO COMPEL NO. 8: Defendants object to Plaintiff's
2 assertion of non-responsiveness. Defendants produced the Deductions from Funding Check,
3 Initial Escrow Account Disclosure Statement, Application Fee Disclosure, Schedler Mack
4 Insurance Binder, Alliance Title Commitment. Defendants are currently unaware of any other
5 documents relating to fees paid or assessed on the HUD-1.
6

7 RESPONSE TO MOTION TO COMPEL NO. 9: Defendants object to Plaintiff's
8 assertion of non-responsiveness. Defendants have produced the Note, Deed of Trust dated June
9 17, 2005, Corporation Assignment of Deed of Trust recorded on August 24, 2009, and
10 Appointment of Successor Trustee recorded on August 24, 2009. Defendants have established
11 enforceability of the security interest at issue in compliance with I.C. § 28-3-301 and I.C. § 45-
12 15.
13

14 RESPONSE TO MOTION TO COMPEL NO. 10: Defendants object to Plaintiff's
15 assertion of non-responsiveness. Defendants are not currently aware of any documents showing
16 Plaintiff's obligation on the loan has been paid by another source, and no insurance claims were
17 made in relation to this loan.
18

19 RESPONSE TO MOTION TO COMPEL NO. 11: Defendants object to Plaintiff's
20 assertion of non-responsiveness. Defendants are not currently aware of any documents showing
21 Plaintiff's obligation on the loan has been paid by another source, and no insurance claims were
22 made in relation to this loan.
23

24 RESPONSE TO MOTION TO COMPEL NO. 12: Defendants object to Plaintiff's
25 assertion of non-responsiveness. Defendants have produced the Note, Deed of Trust dated June
26 17, 2005, Corporation Assignment of Deed of Trust recorded on August 24, 2009, and

1 Appointment of Successor Trustee recorded on August 24, 2009. As there were no insurance
2 claims made in relation to this loan, Defendants are unable to produce "payments made or
3 received in connection with" such claims.

4 RESPONSE TO REQUESTS FOR PRODUCTION NO. 13: Plaintiff appears satisfied
5 with Defendants' response to Requests for Production number 13. However, the response to this
6 Request for Production is directly related to Requests 8-12, which Plaintiff asserts non-
7 compliance with.

8 RESPONSE TO MOTION TO COMPEL NO. 14: Defendants object to Plaintiff's
9 assertion of non-responsiveness. Defendants are not currently aware of any documents showing
10 Plaintiff's obligation on the loan has been paid by another source. Defendants are not currently
11 aware of any documents concerning "funding of the mortgage loan the subject of this action by
12 and certificated or uncertificated security" beyond the documents already produced.

13 RESPONSE TO MOTION TO COMPEL NO. 15: Defendants object to Plaintiff's
14 assertion of non-responsiveness. Defendants have produced the Note, Deed of Trust dated June
15 17, 2005, Corporation Assignment of Deed of Trust recorded on August 24, 2009, and
16 Appointment of Successor Trustee recorded on August 24, 2009. Defendants have established
17 enforceability of the security interest at issue in compliance with I.C. §28-3-301 and I.C. §45-15.

18 RESPONSE TO MOTION TO COMPEL NO. 16: Defendants object to Plaintiff's
19 assertion of non-responsiveness. Defendants have produced the Corporation Assignment of
20 Deed of Trust recorded on August 24, 2009, and Appointment of Successor Trustee recorded on
21 August 24, 2009. Defendants are currently unaware of any other assignments related to the Deed
22 of Trust, or any "credit default swap partner agreements and/or ISDA swap agreements."
23
24
25
26

1 RESPONSE TO MOTION TO COMPEL NO. 17: Defendants object to Plaintiff's
2 assertion of non-responsiveness. Requests for information, rather than document production, are
3 not made pursuant to I.R.C.P. 34. Defendants are not currently aware of any documents
4 "contained within any mortgage servicing or accounting computer programs... concerning the
5 servicing or subservicing of the mortgage loan the subject of this action," beyond the documents
6 already produced.
7

8 RESPONSE TO MOTION TO COMPEL NO. 18: Defendants object to Plaintiff's
9 assertion of non-responsiveness. Requests for information, rather than document production, are
10 not made pursuant to I.R.C.P. 34. Defendants are not currently aware of any documents
11 "identifying any descriptions or legends of all codes utilized within any mortgage servicing or
12 accounting system" identified in connection with Request for Production number 15.
13

14 RESPONSE TO MOTION TO COMPEL NO. 19: Defendants object to Plaintiff's
15 assertion of non-responsiveness. Defendants produced the loan history, and copies of all checks
16 received as payment on the loan. Defendants are not currently aware of any other documents
17 evidencing payments "by the borrower or any third party on or toward the loan obligation."
18

19 RESPONSE TO MOTION TO COMPEL NO. 20: Defendants object to Plaintiff's
20 assertion of non-responsiveness. Defendants have produced a copy of the loan history and check
21 from United Heritage dated August 19, 2005. Defendants are not currently aware of any other
22 documents evidencing credits applied against any balance due on the mortgage loan.

23 RESPONSE TO MOTION TO COMPEL NO. 21: Defendants object to Plaintiff's assertion of
24 non-responsiveness. Defendants have produced the Note, Deed of Trust dated June 17, 2005,
25 Corporation Assignment of Deed of Trust recorded on August 24, 2009, and Appointment of
26

1 Successor Trustee recorded on August 24, 2009. Defendants are not currently aware of any
2 other documents "setting forth the disposition of all payments made by the borrower or any third
3 party in connection with the loan obligation the subject of this action."

4 RESPONSE TO MOTION TO COMPEL NO. 22: Defendants object to Plaintiff's
5 assertion of non-responsiveness. Defendants have produced the loan history. Defendants are not
6 currently aware of any other documents related to tax payments.

7 RESPONSE TO MOTION TO COMPEL NO. 23: Defendants object to Plaintiff's
8 assertion of non-responsiveness. Defendants produced the Corporation Assignment of Deed of
9 Trust in favor of Bank of New York Mellon recorded on August 24, 2009, and the Appointment
10 of Successor Trustee recorded on August 24, 2009. Defendants are currently unaware of any
11 other assignments related to the Deed of Trust, or any documents concerning "escrow analyses."
12

13 RESPONSE TO MOTION TO COMPEL NO. 24: Defendants object to Plaintiff's
14 assertion of non-responsiveness. Defendants produced the Corporation Assignment of Deed of
15 Trust in favor of Bank of New York Mellon recorded on August 24, 2009, and the Appointment
16 of Successor Trustee recorded on August 24, 2009. Defendants are currently unaware of any
17 other documents that would answer Plaintiff's concern about assessing "whether the assignment
18 transactions were fraudulent."
19

20 RESPONSE TO MOTION TO COMPEL NO. 25: Defendants object to Plaintiff's
21 assertion of non-responsiveness. Defendants produced the Corporation Assignment of Deed of
22 Trust in favor of Bank of New York Mellon recorded on August 24, 2009, and the Appointment
23 of Successor Trustee recorded on August 24, 2009. Defendants are currently unaware of any
24 other assignments or agreements related to the Deed of Trust.
25
26

1 RESPONSE TO MOTION TO COMPEL NO. 26: Defendants object to Plaintiff's
2 assertion of non-responsiveness. Defendants are not currently aware of any other documents,
3 beyond those already produced, "comprising invoices, bills, or statements for any charges in
4 connection with the mortgage loan."
5

6 RESPONSE TO REQUESTS FOR PRODUCTION NO. 27: Plaintiff appears satisfied
7 with Defendants' response to Requests for Production number 27, consisting of the Note, Lock-
8 In Agreement, Amortization Schedule, and Truth In Lending Statement.

9 RESPONSE TO MOTION TO COMPEL NO. 28: Defendants object to Plaintiff's
10 assertion of non-responsiveness. Defendants produced the loan history, and copies of all checks
11 received as payment on the loan. Defendants are not currently aware of any other documents
12 evidencing payments.
13

14 RESPONSE TO REQUESTS FOR PRODUCTION NO. 29: Plaintiff appears satisfied
15 with Defendants' response to Requests for Production number 29, consisting of the loan history.

16 RESPONSE TO MOTION TO COMPEL NO. 30: Defendants object to Plaintiff's
17 assertion of non-responsiveness. Defendants have produced the loan history. Defendants are not
18 currently aware of any other documents related to tax payments.
19

20 RESPONSE TO REQUESTS FOR PRODUCTION NO. 31-35: Plaintiff appears satisfied
21 with Defendants' response to Requests for Production numbers 31-35, consisting of a copy of the
22 appraisal, Hazard Insurance Requirements, and the Deed of Trust dated June 17, 2005.

23 RESPONSE TO MOTION TO COMPEL NO. 36: Defendants object to Plaintiff's
24 assertion of non-responsiveness. Defendants have produced the Note, Deed of Trust dated June
25 17, 2005, Corporation Assignment of Deed of Trust recorded on August 24, 2009, and
26

1 Appointment of Successor Trustee recorded on August 24, 2009. Defendants are not currently
2 aware of any other recorded assignment.

3 RESPONSE TO MOTION TO COMPEL NO. 37: Defendants object to Plaintiff's
4 assertion of non-responsiveness. Requests for information, rather than document production, are
5 not made pursuant to I.R.C.P. 34. Defendants are not currently aware of any documents "setting
6 forth the present physical location of the original mortgage and the original note the subject of
7 this action." Additionally, identifying the location and storage of loan documents is not a
8 prerequisite to foreclosure by notice and sale under I.C. § 45-15.
9

10 RESPONSE TO MOTION TO COMPEL NO. 38: Defendants object to Plaintiff's
11 assertion of non-responsiveness. Requests for information, rather than document production, are
12 not made pursuant to I.R.C.P. 34. Defendants are not currently aware of any documents
13 containing "the name, address, and telephone number of the physical custodial of the original
14 note and original mortgage." Additionally, identifying such information is not a prerequisite to
15 foreclosure by notice and sale under I.C. § 45-15.
16

17 RESPONSE TO MOTION TO COMPEL NO. 39: Defendants object to Plaintiff's
18 assertion of non-responsiveness. Defendants produced the Corporation Assignment of Deed of
19 Trust in favor of Bank of New York Mellon recorded on August 24, 2009. Defendants are
20 currently unaware of any other assignments related to the Deed of Trust.
21

22 RESPONSE TO MOTION TO COMPEL NO. 40: Defendants object to Plaintiff's
23 assertion of non-responsiveness. Requests for information, rather than document production, are
24 not made pursuant to I.R.C.P. 34. Defendants are not currently aware of the "full name, current
25 address, and telephone number of each holder of or investor" in a "Specialized Investment
26

1 Vehicle (SIV), Collateralized Mortgage Obligation (CMO), Collateralized Debt Obligation
2 (CDO), series of mortgage-backed securities or certificates (MBS), or credit default swap
3 (CDS),” as none of those entities are relevant to enforcement of the security interest at issue.

4 RESPONSE TO MOTION TO COMPEL NO. 41: Defendants object to Plaintiff’s
5 assertion of non-responsiveness. Requests for information, rather than document production, are
6 not made pursuant to I.R.C.P. 34. Defendants are not currently aware of any documents
7 containing the “full name, current address, and telephone number of all persons who authorized
8 the filing of this foreclosure action.”

9 RESPONSE TO MOTION TO COMPEL NO. 42: Defendants object to Plaintiff’s
10 assertion of non-responsiveness. Defendants produced the Corporation Assignment of Deed of
11 Trust recorded on August 24, 2009 and the Appointment of Successor Trustee recorded on
12 August 24, 2009. Defendants are not currently aware of any “transfer or assignment, by HUD,
13 of any foreclosure rights to any party.”

14 RESPONSE TO MOTION TO COMPEL NO. 43: Defendants object to Plaintiff’s
15 assertion of non-responsiveness. Defendants produced the Deed of Trust dated June 17, 2005
16 listing MERS as beneficiary, and the Corporation Assignment of Deed of Trust recorded on
17 August 24, 2009. Defendants are not currently aware of any other documents granting authority
18 under the Deed of Trust at issue to MERS.

19 RESPONSE TO MOTION TO COMPEL NO. 44: Defendants object to Plaintiff’s
20 assertion of non-responsiveness. Defendants have produced the web site link to the documents
21 pertaining to the “Alternative Loan Trust 2005-28CB Mortgage Pass-Through Certificates,
22 Series 2005-28CB.” Plaintiff has not specifically requested an alternative form for production of
23
24
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26

1 this record, pursuant to I.R.C.P. 34(b)(1). Defendants are not currently aware of any other
2 documents concerning “any trust created incident or related to the securitization of the mortgage
3 loan the subject to this action.”

4 RESPONSE TO MOTION TO COMPEL NO. 45: Defendants object to Plaintiff’s
5 assertion of non-responsiveness. Defendants are not currently aware of any documents
6 “demonstrating the compliance of the REMIC into which the mortgage loan the subject hereof
7 was assigned with Internal Revenue Code Section 860,” or any documents showing Plaintiff’s
8 obligation on the loan has been paid by another source, or any documents related to tax
9 payments.
10

11 RESPONSE TO MOTION TO COMPEL NO. 46: Defendants object to Plaintiff’s
12 assertion of non-responsiveness. Defendants are not currently aware of any documents
13 concerning compliance with “REMIC qualification guidelines,” or any documents related to tax
14 payments.
15

16 RESPONSE TO MOTION TO COMPEL NO. 47: Defendants object to Plaintiff’s
17 assertion of non-responsiveness. Defendants produced the loan history. Defendants are not
18 currently aware of any documents “evidencing the receipt and application of any monies
19 received from or as a result of the Federal Trouble Assets Recovery Program (TARP).”
20

21 RESPONSE TO MOTION TO COMPEL NO. 48: Defendants object to Plaintiff’s
22 assertion of non-responsiveness. Defendants are not currently aware of any documents
23 concerning the payment of “attorneys’ fees and costs to counsel for Defendants in this action.”
24 Moreover, to the extent that this Request references any fee agreements between counsel and a
25 client, such agreements are work product, not relevant to this cause of action, and do not relate to
26

1 the "real party in interest."

2 RESPONSE TO MOTION TO COMPEL NO. 49: Defendants object to Plaintiff's
3 assertion of non-responsiveness. Defendants have produced all documents subject to Plaintiff's
4 Requests for Production.

5
6 **C. DEFENDANTS SHOULD BE AWARDED COSTS AND ATTORNEY FEES**

7 I.C. § 12-121 provides for an award of fees where "a party's claim or defense is
8 frivolous, unreasonable, or without foundation." *Kiebert v. Goss*, 144 Idaho 225, 159 P.3d 862
9 (2007), quoting *Thomas v. Madsen*, 142 Idaho 635, 639, 132 P.3d 392, 396 (2006).

10 Here, the Court should reject Plaintiff's Motion to Compel because it is either untimely,
11 or based on a false belief that discovery has not been tendered, or interrogatories that were never
12 asked have not been answered. Defendants respectfully request that costs and attorney fees be
13 awarded to them as the prevailing party on Plaintiff's motion, which lacks support for its claims.
14

15
16 DATED this 17th day of May, 2010.

17
18 **ROUTH CRABTREE OLSEN, P.S.**

19 By: 
20 Lance E. Olsen, ISB No. 7106

21 Attorneys for Defendant Bank of New
22 York Mellon, Mortgage Electronic
23 Registration Systems, Inc. and Recontrust
24 Company, N.A.
25
26

VERIFICATION

State of CALIFORNIA)
) ss
County of Ventura)

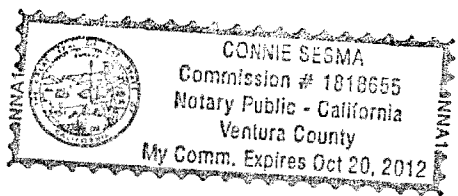
Sharon Mason being first duly sworn, deposes and says:

That she is the Authorized Agent of Defendant herein, that she has read the foregoing document, knows the contents thereof, and believes the same to be true and correct to the of his/her information, knowledge and belief.

Sharon Mason

SUBSCRIBED AND SWORN to (OR AFFIRMED) before me this 29th day of April, 2010

Connie Segma
Notary Public
Residing at San Jose Valley CA
Commission Expires 10/20/2012



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of May, 2010, a true and correct copy of the foregoing document was served upon the following individuals, by the method indicated below, and addressed as follows:

- U.S. Mail
- Hand Delivered
- Overnight Mail
- Facsimile

Monica Flood Brennan
608 Northwest Boulevard
Suite 101
Coeur D'Alene, ID 83814
Fax: 208-676-8288

Jeff Barnes
W.J. Barnes, P.A.
c/o International Mediation Associates, Inc.
6655 West Sahara Avenue
Suite B200
Las Vegas, NV 89146



Larice E. Olsen

STATE OF IDAHO
COUNTY OF KOOTENAI

2010 MAY 13 AM 9:54

COURT CLERK
[Signature]
P.B.

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Attorneys for Defendants, Bank of New York Mellon,
Mortgage Electronic Registration Systems, Inc. and
Recontrust Company, N.A.

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

VERMONT TROTTER,

Plaintiff,

Case No. CV-2010-95

vs.

**DEFENDANTS' REPLY TO
PLAINTIFF'S MEMORANDUM OF
LAW IN OPPOSITION TO
DEFENDANTS' MOTION TO
DISMISS**

BANK OF NEW YORK MELLON FKA
BANK OF NEW YORK AS TRUSTEE FOR
THE CERTIFICATE HOLDERS OF
CWALT, INC. ALTERNATIVE LOAN
TRUST 2005-28CB MORTGAGE PASS-
THROUGH CERTIFICATES SERIES 2005-
28CB: MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.; AND
RECONTRUST COMPANY, N.A.,

Defendants.

COMES NOW, Defendants Bank of New York Mellon fka Bank of New York as trustee for the Certificate Holders of CWALT, Inc. Alternative Loan Trust 2005-28CB Mortgage Pass-through Certificates Series 2005-28CB ("Bank of New York Mellon"), Mortgage Electronic Registration Systems, Inc. ("MERS"), and Recontrust Company, N.A. ("Recontrust"), by and through their attorneys of record, Routh Crabtree Olsen, P.S. and submit this Memorandum replying to Plaintiff's Memorandum of Law in Opposition to Defendants' Motion to Dismiss pursuant to I.R.C.P. 12(b)(6).



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I. BACKGROUND

Plaintiff's response to the Defendants' Motion to Dismiss is predicated on incorrect assumptions that: 1) Mortgage Electronic Registration Systems, Inc. ("MERS"), as nominee for Countrywide Home Loans, Inc., was *not* the beneficiary under the Deed of Trust ("DOT") recorded June 24, 2005, 2) there is an "inconsistency" between the named beneficiary in the Appointment of Successor Trustee and the named beneficiary in the Notice of Trustee's Sale, and 3) Defendants have "failed to even address" various claims concerning securitization, thus establishing a disputed issue of material fact. However, these assertions misread the applicable law and Defendants' arguments, supported by relevant documents.

Despite 30 pages of briefing, 19 pages of requested discovery including 49 separate requests for production, and the opportunity to review approximately 300 pages of documentation supplied by the lender, the Plaintiff is unable to raise any disputes to the following facts:

- (1) Plaintiff borrowed \$145,000.00 from Countrywide Home Loans, Inc. and pledged as security for that loan real property in Couer d' Alene, Idaho.
- (2) Plaintiff and Countrywide Home Loans, Inc. chose MERS as the beneficiary at the time of the \$145,000.00 loan.
- (3) Plaintiff agreed under paragraph 9 of the relevant note that he would "...waive any right of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payments of amounts due...."
- (4) Plaintiff agreed under paragraph 20 of the relevant deed of trust that "The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or

1 more times without prior notice to Borrower.”

2 (5) Plaintiff failed to make payments as due on that loan and has not made a payment on
3 the loan in more than one year.

4 (6) Defendants have complied precisely with every provision of every controlling statute
5 within the Idaho Trust Deed Act found in I.C. § 45-15.
6

7 (7) I.C. § 45-15 specifically allows nonjudicial enforcement of Trust Deeds.

8 Faced with the above reality, Plaintiff asks the Court to disregard the terms of the agreed
9 contract and the only applicable Idaho law, and instead look at other cases from other states or
10 jurisdictions with different facts, and different law, to excuse Plaintiff's failure to perform on
11 promised obligations and further, impose new requirements upon the lender and trustee that are
12 not now, nor have ever been, a part of the law in Idaho.
13

14 Because Plaintiff has failed to offer any dispute to his breach under the terms of the Note
15 and Deed of Trust and failed to establish any cause of action recognized under Idaho law.
16 Defendants respectfully maintain their request for this Court to dismiss the Complaint with
17 prejudice pursuant to I.R.C.P. 12(b)(6).
18

19 **II. ARGUMENT**

20 **A. MERS' AUTHORITY AS BENEFICIARY, AND THE ASSIGNMENT OF ITS** 21 **INTEREST IN THE DEED OF TRUST, IS ACKNOWLEDGED BY ALL** 22 **PARTIES TO THE DEED OF TRUST.**

23 1. Plaintiff Incorrectly Relies on Case Law that Has No Precedential Value 24 for the Issues in This Case.

25 Plaintiff relies on an Idaho Bankruptcy Court opinion and various extra-jurisdictional
26 cases for the argument that MERS was not the beneficiary of the DOT, and consequently had no
authority to assign its interest under the DOT to The Bank of New York Mellon fka The Bank of

1 New York as Trustee for the Certificate Holders of CWALT, Inc. Alternative Loan Trust 2005-
2 28CB Mortgage Pass-through Certificates Series 2005-28CB (“Bank of New York Mellon”).
3 See Plaintiff’s Memorandum of Law in Opposition to Defendants’ Motion to Dismiss
4 (“Plaintiff’s Response”), ¶ 6-33.
5

6 Plaintiff does not dispute that the parties agreed by contract that MERS would acts as the
7 beneficiary and instead cites cases that are factually distinguishable and legally inapplicable to a
8 non-judicial foreclosure under the Idaho Trust Deed Act in Title 45, Chapter 15 of state laws.

9 First, Plaintiff inappropriately relies on *In re Sheridan* for the notion that MERS could
10 not be a beneficiary. Case No. 08-20381-TM, March 12, 2009 at 5, citing Fed. R. Bankr. P.
11 4001(a)(1), 9014; LBR 4001.2(a), (b).¹ *Sheridan* discusses the judicial standing of a creditor
12 seeking relief from stay, not nonjudicial foreclosure by a current beneficiary. In *Sheridan*,
13 MERS identified itself as a “secured creditor and Claimant,” unlike MERS’ role in this case. *Id.*
14 at 3.
15

16 *Sheridan* holds that MERS had not provided “an adequate record” to show it was a “party
17 in interest with standing entitled to seek... relief;” this is because there was no evidence to show
18 that “Fieldstone Mortgage Investment Trust Series 2006-3... or HSBC Bank USA...” had an
19 interest in the note or deed of trust. *Id.* at 11, 16. The Bankruptcy Court ruled on MERS’ motion
20 for stay relief based only on “evidence submitted at the § 362(e) final hearing,” which consisted
21 solely of a single exhibit containing of the note and deed of trust, and no other assignments or
22 affidavits. *Id.* at 15.
23

24 The central question in *Sheridan* is limited to whether MERS, without the participation of
25 the nominee for whom MERS was acting, could independently prosecute a motion for relief
26

¹ A copy of this opinion is available at http://www.id.uscourts.gov/decisions-bk/Sheridan_decision.pdf.

1 from stay in the Bankruptcy Court; the opinion has no value to determining the validity of a non-
2 judicial foreclosure and the Court offers no opinion as to the requirements under state law for
3 enforcement of the deed.

4 Likewise, Plaintiff attempts to extend the holding of *In re Wilhelm* beyond its question of
5 standing for multiple creditors in the Bankruptcy stay relief context. Case No. 08-20577-TM,
6 July 7, 2009 at 12, 14, *citing* 11 U.S.C. § 362, *In re Hayes*, 393 B.R. 259 (Bankr. D. Mass.
7 2008).² *Wilhelm* notes that declarations of at least two parties seeking relief did not comply with
8 “basic evidentiary rules.” *Id.* at 15. In one instance, no note was attached to a declaration, and a
9 note submitted with the motion contained different dates and principal amounts. *Id.* at 21. The
10 Court notes that there was no evidence demonstrating compliance with Local Bankruptcy Rule
11 4001.2, requiring copies of documents evidencing the obligation. *Id.* at 22.

12
13
14 *Wilhelm* also relies on cases from other jurisdictions where *the record as presented* failed
15 to establish MERS’ authority to “transfer the promissory notes at issue.” *Id.* at 23, *citing Saxon*
16 *Mortgage Servs. v. Hillery*, 2008 WL 5170180 (N.D.Cal.2008, unpublished opinion), *Bellistri v.*
17 *Ocwen Loan Servicing, LLC*, 284 S.W.3d 619, (Mo.App. E.D. 2009), *In re Vargas*, 396 B.R. 511
18 (Bankr.C.D.Cal. 2008). None of the cases *Wilhelm* relies on address the state law definition of
19 “beneficiary,” or the authority of a beneficiary to assign a security interest, in the nonjudicial
20 foreclosure context.

21
22 *Sheridan* and *Wilhelm* are not “the current state of the law in Idaho as to the lack of
23 authority on the part of MERS...,” as Plaintiff asserts. *See* Plaintiff’s Response at 6. First,
24 neither case offered any comment on the Idaho Trust Deed Act. Second, the issue at hand in
25 both cases was standing to proceed in a specific judicial proceeding, relief from stay. The Idaho
26

² A copy of this opinion is available at http://www.id.uscourts.gov/decisions-bk/Wilhelm_decision_rev.pdf.

1 Legislature has specifically provided a nonjudicial alternative to enforcement of a trust deed.
2 The Trust Deed Act is a complete set of rules and requirements providing a limited relief to a
3 creditor seeking enforcement of a trust deed. Plaintiff appears to suggest that MERS'
4 involvement in a security agreement should always lead to unenforceability of the interest
5 contained within it; such a result is nonsensical because MERS' capacity as beneficiary is no
6 different than any other entity's role in the same manner. Plaintiff asks this Court to believe that
7 naming MERS as beneficiary should absolve Plaintiff of his loan obligation and invalidate the
8 Deed of Trust that he assented to all terms thereof.

9
10 Several holdings specifically reject Plaintiff's arguments in nonjudicial foreclosure
11 proceedings. In *Chilton v. Federal Nat. Mortg. Ass'n.*, 2009 WL 5197869 (E.D.Cal. 2009), the
12 Court held that "it is well-established that non-judicial foreclosures can be commenced without
13 producing the original promissory note." Distinguishing *Landmark National Bank v. Kessler*,
14 216 P.3d 158 (Kan. 2009) and *Bellistri*, 284 S.W.3d at 623, *Chilton* holds that "one possessing
15 the deed of trust cannot foreclose on a mortgage without 1) also possessing some interest in the
16 promissory note, or 2) obtaining permission to act as agent of the note-holder." *Id.* *Chilton's*
17 reasoning demonstrates that nonjudicial foreclosure statutes require less evidence supporting a
18 beneficiary's authority than a judicial foreclosure action or Bankruptcy Court stay relief request.
19 With a nonjudicial foreclosure, there is no requirement for the additional production of
20 documentation to "prove" who holds a note, or the basis for the assertion of authority, other than
21 what is specifically articulated as necessary in the Trust Deed Act.

22
23
24 Other state courts have also recognized that MERS itself can invoke the power of sale. In
25 *Jackson v. MERS, Inc.*, the Minnesota Supreme Court upheld MERS' ability to proceed with
26

1 nonjudicial foreclosure of a property, stating: “any disputes that arise between the mortgagee
2 holding legal title and the assignee of the promissory note holding equitable title do not affect the
3 status of the mortgagor for purposes of foreclosure by advertisement.” 770 N.W.2d 487 (2009).

4 In *Taylor, Bean & Whitaker Mortg. Corp. v. Brown*, 276 Ga. 848, 583 S.E.2d 844 (2003),
5 the Georgia Supreme Court likewise approved of MERS’ power to directly commence a
6 nonjudicial foreclosure on a lender’s behalf when the debtor defaulted on her loan. In reversing
7 a judgment in favor of the Plaintiff, the Supreme Court stated:

9 [t]he trial court ruled that Brown was entitled to the equitable remedy of cancellation of
10 that deed because the original lender, TB&W, sold the original loan in the secondary
11 market and is therefore not owed any money at the present time; because MERS, as the
12 nominee of TB&W and its assigns, is not owed any money under the note; and because
there was no evidence of any other entity that is owed money under the note. We
disagree with this ruling. *Id.* at 850.

13 The Court found that the Plaintiff’s admission of failing to pay off a promissory note “showed
14 that she was not entitled to the relief of cancellation of the security deed.” *Id.* at 851. As such,
15 the Court recognized that a person may not seek to avoid payment obligations, and remain in
16 default, simply by alleging the transfer or sale of a note in a secondary market.

17 Plaintiff’s arguments improperly attempt to graft judicial rules and procedure onto a non-
18 judicial foreclosure.³ Incredibly, Plaintiff asserts that compliance “with the Idaho foreclosure
19 procedure is irrelevant to the inquiry and issues raised by the Complaint.” In other words, the
20

21 _____
22 ³ Even in the judicial context, there is support for MERS’ ability to directly bring an action to seek enforcement of a
23 security interest. In *MERS v. Azize*, 965 So.2d 151 (Fla.App. 2 Dist. 2007), the Florida Court of Appeals overturned
24 a lower court decision that dismissed MERS’ attempt to judicially foreclose on several mortgages. The Court of
25 Appeals stated: “[t]he trial court found that even if MERS was the holder of the note based on a transfer by the
26 lender or a servicing agent, MERS could never be a proper plaintiff because it did not own the beneficial interest in
the note. This was an erroneous conclusion.” See also *US Bank, N.A. v. Flynn*, 897 N.Y.S.2d 855 (N.Y. Sup. 2010)
[“a written assignment of the note and mortgage by MERS, in its capacity as nominee, confers good title to the
assignee and is not defective for lack of an ownership interest in the note at the time of the assignment. In such
cases, MERS is acting as the nominee of the owner of the note and of the mortgage, in which MERS is additionally
designated as the mortgagee of record. No disconnect between the note and mortgage occurs when MERS acts, at
the time of the assignment, as the nominee of the original lender or a successor owner or holder of the note and
mortgage.”]; *MERS v. Ralich*, 982 A.2d 77 (Pa. Super. 2009).

1 Idaho Trust Deed Act is wholly irrelevant legislation as no party may rely on the provisions of
2 that act to enforce a trust deed. In theory, this would also mean that no borrower whose
3 liabilities have been extinguished by compliance with the Trust Deed Act is safe from further
4 action as the general laws of Idaho would allow for judgment on any debt remaining.
5

6 Plaintiff asserts that the “real issue” concerns whether the creditor had “any alleged
7 authority to even undertake actions toward foreclosure.” This question is answered in the
8 affirmative directly by the laws controlling non-judicial foreclosure, governed solely in this case
9 by I.C. § 45-15. It is this law, and not the law of judicial foreclosure in another state or
10 bankruptcy procedure in a bankruptcy court that should control the outcome of this case.
11

12 2. MERS was Named as the Beneficiary Under the DOT, and Possessed
13 Authority to Execute an Assignment of the DOT.

14 No cause of action exists where Defendants properly followed statutory requirements.
15 *See Federal Home Loan Mortg. Corp. v. Appel*, 143 Idaho 42, 127 P.3d 429 (2006) [involving a
16 deed of trust listing MERS, not the lender, as beneficiary; Court addressed which statutes for
17 purchasing property at a trustee’s sale *MERS had to comply with*, and recognizing MERS’
18 authority as a note holder]; *see also Frontier Federal Sav. and Loan Ass’n v. Douglass*, 123
19 Idaho 808, 853 P.2d 553 (1993). Plaintiff alleges no instance where Defendants’ action varied
20 from state law. To the contrary, Plaintiff defaulted on his loan obligation, yet Plaintiff now seeks
21 to bar enforcement of the security interest he pledged in agreeing to the DOT. Because
22 Defendants complied with I.C. § 45-15, Plaintiff’s Complaint fails to allege any action that this
23 Court can remedy.
24

25 I.C. § 45-1502(1) defines the “Beneficiary” of a DOT as the person named or designated
26 therein, for whose benefit the DOT is given, or his successor in interest.

1 Here, MERS was the named beneficiary of the DOT. Plaintiff cannot deny this fact,
2 written in bold letters on the first page of the DOT, which Plaintiff signed and accepted as to “all
3 terms and covenants contained in this Security Instrument...” *See* Complaint, ¶ 8 [“The Deed of
4 Trust identified Defendant MERS as being the ‘beneficiary’ under the Deed of Trust.”]
5

6 MERS subsequently executed an assignment of the DOT in favor of Bank of New York
7 Mellon, the effect of which was to name Bank of New York Mellon as the new beneficiary (i.e.
8 successor in interest). Plaintiff contends that this assignment is unauthorized, and any argument
9 supporting its validity is “totally without merit,” but tellingly fails to offer any argument as to the
10 plain definition of “beneficiary” under I.C. § 45-1502(1) and how that definition negates the
11 entirety of his claim. *See* Plaintiff’s Response at 3.
12

13 If Plaintiff does not believe that state law should apply to all beneficiaries equally, then
14 Plaintiff must address those arguments to the Idaho Legislature, not this Court. To accept
15 Plaintiff’s theory, any beneficiary – MERS or not – would be unable to assign its beneficial
16 interest under a Deed of Trust to a successor in interest, and unable to appoint a successor
17 trustee. That position is clearly not supported by the law. Therefore, this Court should grant
18 Defendants’ Motion to Dismiss.
19

20 **B. THE APPOINTMENT OF SUCCESSOR TRUSTEE AND NOTICE OF
21 TRUSTEE’S SALE BOTH ADHERE TO STATUTORY REQUIREMENTS.**

22 Plaintiff also alleges that “the Appointment of Successor Trustee claims that Defendant
23 BONY is the alleged ‘beneficiary,’ while the Notice of Trustee’s Sale inconsistently claims that
24 Defendant MERS is the alleged ‘beneficiary.’” *See* Plaintiff’s Response at 2. Plaintiff suggests
25 that these differences show error in the non-judicial foreclosure process. However, Plaintiff is
26 again mistaken about what is required under I.C. § 45-15 and in failing to read the statute, put

1 forward an argument that lacks support.

2 I.C. § 45-1503 states:

3 [w]here any transfer in trust of any estate in real property is hereafter made to secure the
4 performance of such an obligation, a power of sale is hereby conferred upon the trustee to
5 be exercised after a breach of the obligation for which such transfer is security, and a
6 deed of trust executed in conformity with this act may be foreclosed by advertisement
and sale in the manner hereinafter provided, or, at the option of beneficiary, by
foreclosure as provided by law for the foreclosure of mortgages on real property.

7 Under I.C. § 45-1504(2), the beneficiary of a DOT has authority to replace the trustee. Thus, as
8 set forth in the statutes above, a beneficiary may appoint a successor trustee to proceed with non-
9 judicial foreclosure if a debtor breaches his obligation under a Deed of Trust.
10

11 I.C. § 45-1506(4) provides that the Notice of Trustee's Sale shall include:

- 12 (a) The names of the grantor, trustee and beneficiary *in the trust deed* (emphasis added).
13 (b) A description of the property covered by the trust deed.
14 (c) The book and page of the mortgage records or the recorder's instrument number
where the trust deed is recorded.
15 (d) The default for which the foreclosure is made.
16 (e) The sum owing on the obligation secured by the trust deed.
17 (f) The date, time and place of the sale which shall be held at a designated time after 9:00
a.m. and before 4:00 p.m.. Standard Time, and at a designated place in the county or one
of the counties where the property is located.

18 The statute thus requires that the Notice of Trustee's Sale list the original grantor, trustee and
19 beneficiary, not any party later assigned.

20 MERS, as beneficiary to the DOT, assigned its beneficial interest to Bank of New York
21 Mellon, who acted with proper authority to appoint Recontrust Company, N.A. as successor
22 trustee. The Assignment of Deed of Trust and Appointment of Successor Trustee
23 unambiguously establish this chain.
24

25 The Notice of Trustee's Sale, by comparison, lists the names of the grantor, trustee and
26 *beneficiary in the trust deed*, precisely what is necessary under I.C. § 45-1506(4)(a). MERS is

1 the beneficiary under the DOT; therefore, it is listed in the Notice of Trustee's Sale. Plaintiff
2 identifies no defect in Defendants' compliance with state law. If the Plaintiff believes that this is
3 misleading or inappropriate, his argument is properly made to the Idaho Legislature instead.

4 Plaintiff's contention that only the "original lender" has authority to execute an
5 Assignment of Deed of Trust, or must be listed on the Notice of Trustee's Sale, is erroneous. *See*
6 Plaintiff's Response at 4. Therefore, Plaintiff's argument on this point does not support a claim
7 for relief against Defendants.
8

9 **C. DEFENDANTS DO NOT "CREATE A DISPUTE OF MATERIAL FACT" IN**
10 **RESPONDING TO CLAIMS THAT SECURITIZATION OF A LOAN GIVES**
11 **RISE TO DEFECTS IN THE NON-JUDICIAL FORECLOSURE PROCESS.**

12 Plaintiff asserts that, "perhaps even more significantly, Defendants have failed to even
13 address the matters of credit enhancements, insurances, and applicable setoffs to the claimed
14 amount due as set forth in paragraphs 15 and 16 of the Complaint." *See* Plaintiff's Response at
15 15. Plaintiff states that there are issues of material fact concerning whether "Defendant BONY
16 was paid 100, 200, or more percent on the loan..." *Id.* Plaintiff appears to suggest that the
17 purchase of a security by a mortgage loan trust should relieve Plaintiff of his debt. However,
18 none of these accusations relate to the propriety of a nonjudicial foreclosure in response to
19 Plaintiff's default of his loan obligation.
20

21 Whether Plaintiff's loan was securitized has no bearing on whether Defendants complied
22 with I.C. § 45-15 or whether Plaintiff performed on his obligations. There are no Idaho laws
23 preventing the securitization of mortgages or excusing performance of a borrower in cases where
24 a lender may be paid from another source. Again, Plaintiff's arguments seem best addressed to
25 the Idaho Legislature.
26

1 I.C. § 45-1503 does allow for a beneficiary to:

2 [b]ring an action to enforce an obligation owed by grantor or his successor in interest
3 alleging that the beneficiary's interest in the property covered by the trust deed is
4 substantially valueless without affecting the priority of the lien of the trust deed and
5 without waiving his right to require the trust deed to be foreclosed by advertisement and
6 sale....

7 In essence, the beneficiary has a cause of action against whoever is assigned a Deed of Trust, to
8 recover the value of an obligation owed by the successor in interest. But even in that situation,
9 the statute does not restrict the beneficiary's right to pursue nonjudicial foreclosure when a
10 debtor defaults on his loan.

11 There is nothing in paragraphs 15 or 16 of the Complaint which set forth a cause of
12 action for defects in the nonjudicial foreclosure of the Property at issue here. Plaintiff's concerns
13 about "Wall Street" banks, and the securitization of mortgage loans, state no claim and should be
14 rejected by virtue of this Court dismissing the action herein.

15 **III. CONCLUSION**

16 Plaintiff has failed to state a claim upon which relief can be granted. Plaintiff's Response
17 to the Defendants' Motion to Dismiss is based on misstatements of law and fact, and presents no
18 argument in support of the Complaint. Accordingly, Defendants respectfully ask for dismissal,
19 with prejudice, of this case.

20
21 DATED this ____ day of May, 2010.

22 **ROUTH CRABTREE OLSEN, P.S.**

23
24 By: 

25 Lance E. Olsen, ISB No. 7106
26 Attorneys for Defendants Bank of New
York Mellon, Mortgage Electronic
Registration Systems, Inc. and Recontrust
Company, N.A.


1
2 **CERTIFICATE OF SERVICE**

3 I HEREBY CERTIFY that on this ____ day of May, 2010, a true and correct copy of the
4 foregoing document was served upon the following individuals, by the method indicated below, and
addressed as follows:

- 5 [**X**] U.S. Mail
6 [] Hand Delivered
7 [] Overnight Mail
8 [] Facsimile

9 Monica Flood Brennan
608 Northwest Boulevard
Suite 101
Coeur D'Alene, ID 83814

10 Jeff Barnes
11 W.J. Barnes, P.A.
c/o International Mediation Associates, Inc.
12 6655 West Sahara Avenue
Suite B200
13 Las Vegas, NV 89146

14 
Lance E. Olsen

2010-01-17-13
Leri Swadlow

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE
OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

VERMONT TROTTER,)	
)	CASE NO. CV-10-95
Plaintiff,)	
)	MEMORANDUM DECISION, FINDINGS
vs.)	OF FACT AND CONCLUSIONS OF LAW
)	AND ORDER RE: DEFENDANTS'
BANK OF NEW YORK MELLON F/K/A)	MOTION TO DISMISS AND PLAINTIFF'S
BANK OF NEW YORK AS TRUSTEE FOR)	MOTION TO COMPEL
THE CERTIFICATE HOLDERS OF)	
CWALT, INC. ALTERNATIVE LOAN)	
TRUST 2005-28CB MORTGAGE PASS-)	
THROUGH CERTIFICATES SERIES 2005-)	
28CB; MORTGAGE ELECTRONI)	
REGISTRATION SYSTEMS, INC.; and)	
RECONTRUST COMPANY, N.A.)	
)	
Defendants.)	

Monica Flood Brennan, MONICA FLOOD BRENNAN, P.C., for Plaintiff

Jeff Barnes, W.J. BARNES, P.A., for Plaintiff (admitted *pro hac vice*)

Lance E. Olsen, ROUTH CRABTREE OLSEN, P.S., for Defendants

I. Factual and Procedural History

On or about June 17, 2005, Plaintiff Vermont Trotter ("Trotter") executed a Note and Deed of Trust in favor of Mortgage Electronic Registration Systems, Inc. ("MERS") as nominee for Lender Countrywide Home Loans, Inc. ("Countrywide"), its assigns and

successors. *Complaint at p. 3, ¶¶ 7 and 8.* The Deed of Trust was recorded June 24, 2005, as Instrument No. 1959776 in the Kootenai County Recorder's Office.

*Defendants' Memorandum of Law in Support of Motion to Dismiss, Ex. A, the Deed of Trust.*¹ The Deed of Trust encumbers a piece of real property located in Kootenai County, Idaho, commonly known as 512 South 14th Street, Coeur D'Alene, Idaho, 83814 (the "Property") and legally described as Lot 13 in Block 11 of Lakeshore Addition to Coeur d'Alene, according to the official plat thereof, filed in Book B of Plats at page(s) 121², official records of Kootenai County, Idaho. This property is Trotter's primary residence. *Complaint at p. 3, ¶ 5.*

Plaintiff's Complaint states that thereafter Countrywide transferred the servicing rights on the loan to BAC Home Loans Servicing, LP, a subsidiary of Bank of America, N.A. *Complaint at p. 4, ¶ 9*³. Defendants argue that servicing has remained with the same entity as BAC Home Loans is the entity formerly known as Countrywide Home Loans, Inc. and that the name change was a result of Bank of America's acquisition of Countrywide. *Defendants' Memorandum of Law in Support of Motion to Dismiss at p. 3 and Ex. B, Countrywide Home Loans, Inc. Company Profile.*

On or about August 18, 2009, MERS executed a Corporation Assignment of Deed of Trust, and recorded the same as Instrument No. 2228916000 in the Kootenai County Recorder's Office on August 24, 2009, the effect of which was to name as the new beneficiary The Bank of New York Mellon f/k/a The Bank of New York ("Bank of New York") as Trustee for the Certificate Holders of CWALT, Inc. Alternative Loan Trust 2005-28CB Mortgage Pass-through Certificates Series 2005-28CB. *Defendants'*

¹ Defendants have not provided page numbers nor labeled their exhibits, as such this Court has had to do so for form and function purposes of this Decision.

² Trotter's Complaint provides page 128, but the Deed of Trust and all other recordings provide page 121.

³ There are two ¶ 9s in the Complaint, this is the first ¶ 9.

Memorandum of Law in Support of Motion to Dismiss at p. 3 and Ex. C, Corporation Assignment of Deed of Trust.

On August 24, 2009, The Bank of New York executed and caused to be recorded on August 24, 2009, in Kootenai County Recorder's Office, an Appointment of Successor Trustee under Instrument No. 2228917000, pursuant to I.C. § 45-1504, naming Recontrust Company, N.A. ("Recontrust") the successor trustee under the Deed of Trust.

Defendants' Memorandum of Law in Support of Motion to Dismiss at p.3 and Ex. D, Appointment of Successor Trustee; Complaint at p.4 ¶ 10 and Ex. B.

Also on August 24, 2009, Recontrust recorded in Kootenai County Recorder's Office, a Notice of Default⁴ as Instrument No. 2228918000, and mailed Trotter the same. The Notice of Default identifies The Bank of New York as beneficiary under the Deed of Trust. *Defendants' Memorandum of Law in Support of Motion to Dismiss at p.4 and Ex. E, Notice of Default; Complaint at p.4 ¶9⁵ and Ex. A.*

On September 2, 2009, Recontrust executed and mailed Trotter the Notice of Trustee's Sale that set a foreclosure sale for January 11, 2010. *Defendants' Memorandum of Law in Support of Motion to Dismiss at p.4 and Ex. F, Notice of Trustee's Sale; Complaint at p.4 ¶ 11 and Ex. C.*

On January 6, 2010, Trotter filed his Complaint for Declaratory and Injunctive Relief and to Cancel Trustee's Sale Scheduled for January 11, 2010, wherein he alleges that he has never been provided with any Assignment demonstrating that the Deed of

⁴ The Notice of Default provides that the default is "[f]ailure to pay the monthly payments due 05/01/2009 of principal, interest and impounds and subsequent installments due thereafter; plus late charges; together with all subsequent sums advanced by beneficiary pursuant to the terms and conditions of said Deed of Trust, and any supplemental modifications thereto. As of 08/18/2009 this amount is \$5,762.88, together with any unpaid and/or accruing real property taxes, and/or assessments, attorney fees, Trustees' fees and costs, and any other amount advanced to protect the security of said Deed of Trust."

⁵ This is the second ¶ 9 of the Complaint.

Trust was transferred by Countrywide to anyone else including Bank of New York. He also alleges that he has no information that informs him of the current owner of the Note. Additionally, Trotter alleges that the securitized loan trust, into which his loan was placed, may have been taken over by borrower default insurance. Consequently, Trotter argues there may not be any default giving rise to a foreclosure action and sale, as his loan obligation may have been liquidated in whole or in part. As such, Trotter argues that the Defendants do not have standing to foreclose or the proper legal or equitable interest in either the Note or Deed of Trust to institute a foreclosure action. *Complaint at pp. 4-6.*

On January 8, 2010, this Court filed its Temporary Restraining Order Cancelling the Trustee's Sale Scheduled for January 11, 2010, finding that "Plaintiff may lose his residence wrongfully without issuance of this temporary restraining order, and that said injury may be irreparable through the scheduled foreclosure sale." *Order at p. 3.* On February 5, 2010, this Court entered another Temporary Restraining Order restraining the sale of the property on February 8, 2010.

On February 8, 2010, Defendants filed their Answer, and on April 12, 2010, Defendants filed their Motion to Dismiss for Failure to State a Claim upon which Relief can be Granted, pursuant to IRCP 12(b)(6), and a Memorandum of Law in Support of Motion to Dismiss.

On May 12, 2010, Plaintiff filed his Memorandum of Law in Opposition to Defendants' Motion to Dismiss, along with a Motion to Compel seeking this Court to issue an order compelling the Defendants to fully and completely answer Interrogatories and respond to the Request for Production of Documents dated February 16, 2010. On May 18, 2010, Defendants filed their Response to Plaintiff's Motion to Compel

Production of Documents and their Reply to Plaintiff's Memorandum of Law in Opposition to Defendants' Motion to Dismiss.

Oral argument was heard on May 26, 2010, and this Court took the matter under advisement. This Memorandum Decision shall constitute this Court's findings of fact and conclusions of law, pursuant to I.R.C.P. 52(a). Any of the following findings of fact that should be denominated as a conclusion of law shall be deemed to be a conclusion of law. Any of the following conclusions of law that should be denominated a finding of fact shall be deemed a conclusion of law.

II. Defendants' Motion to Dismiss

Defendants Bank of New York, MERS, and Recontrust request this Court to dismiss Plaintiff's Complaint pursuant to IRCP 12(b)(6). Defendants also request that this Court take judicial notice of the various public recordings that are attached to their Memorandum of Law in Support of Motion to Dismiss pursuant to I.R.E. 201.

A. Standards

The standard for reviewing a dismissal for failure to state a cause of action pursuant to I.R.C.P. 12(b)(6), is the same as the standard upon the grant of a motion for summary judgment, if the court considers evidence outside the pleadings in ruling on the motion. I.R.C.P. 12(b); *Idaho Sch. For Equal Educ. Opportunity v. Evans*, 123 Idaho 573, 850 P.2d 724 (1993); *Gardner v. Hollifield*, 97 Idaho 607, 609, 549 P.2d 266, 268 (1976); *Green v. Gough*, 96 Idaho 927, 928, 539 P.2d 280, 281 (1975). In determining whether a complaint adequately states a cause of action, every reasonable intendment will be made to sustain it. *Curtis v. Siebrand Bros. Circus & Carnival Co.*, 68 Idaho 285, 194 P.2d 281 (1948) (citations omitted). A motion under this section admits the truth of the facts alleged, and all intendments and inferences that reasonably may be drawn

therefrom, and such will be considered in light most favorable to the plaintiff. *Walenta v. Mark Means Co.*, 87 Idaho 543, 394 P.2d 329 (1964). A motion to dismiss for failure to state a claim should be granted where it appears beyond doubt that the Plaintiff can prove no set of facts in support of his claim that would entitle him to relief. *Gardner v. Hollifield, supra*. The issue is not whether the plaintiff will ultimately prevail, but whether the party is entitled to offer evidence to support the claims. *Sumpter v. Holland Realty, Inc.*, 140 Idaho 349, 351 93 P.3d 680, 682 (2004)(citation omitted).

A motion for summary judgment shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. I.R.C.P. 56(c); *Loomis v. City of Hailey*, 119 Idaho 434, 436, 807 P.2d 1272 (1991). Once the moving party has properly supported the motion for summary judgment, the non-moving party must come forward with evidence by way of affidavit or otherwise which contradicts the evidence submitted by the moving party and which establishes the existence of a material issue of disputed fact. *Zehm v. Associated Logging Contractors, Inc.*, 116 Idaho 349, 350 775 P.2d 1191 (1988). The purpose of summary judgment proceedings is to eliminate the necessity of trial where facts are not in dispute and where existent and undisputed facts lead to a conclusion of law which is certain. *Berg v. Fairman*, 107 Idaho 441, 444, 690 P.2d 896 (1984).

If the court will be the ultimate trier of fact and if there are no disputed evidentiary facts, the judge is not constrained to draw inferences in favor of the party opposing the motion for summary judgment; rather, the trial judge is free to arrive at the most probable inferences to be drawn from uncontroverted evidentiary facts, despite the possibility of conflicting inferences, because the court alone is responsible for resolving

conflicts between those inferences. *Loomis*, 119 Idaho at 437, 807 P.2d 1272 (1991); *Stafford v. Weaver*, 136 Idaho 223, 225, 31 P.3d 245 (2001) (citation omitted).

B. Discussion

1. Judicial Notice

A court's decision to take judicial notice of an adjudicative fact is a determination that is evidentiary in nature and is governed by the Idaho Rules of Evidence. *Newman v. State*, --- P.3d ---, 2010 WL 323545 (Ct. App., January 29, 2010). I.R.E. 201(b) provides that “a judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” A court must take judicial notice if requested by a party and supplied with the necessary information. *Id.*; I.R.E. 201(d).

The exhibits that Defendants have attached to their Memorandum of Law in Support of Motion to Dismiss, as Exhibits A-F (described above), are not subject to reasonable dispute. In fact, Trotter has not disputed their authenticity providing the Court with three of the same records. Further, the Defendants have requested that this Court take judicial notice of the exhibits in writing and this Court does so pursuant to I.R.E. 201(d).

2. Defendants have standing to maintain a foreclosure of the Property.

Trotter argues in his Complaint and Memorandum of Law in Opposition to Defendants' Motion to Dismiss that Bank of New York is not the beneficiary of the Deed of Trust and Recontrust is not the successor trustee and has no standing to bring forth a foreclosure action as against the Property, as MERS was never the beneficiary but merely the nominee.

Trotter provides that “Idaho courts have spoken extensively on the alleged authority of MERS to do anything, and have uniformly, along with other jurisdictions, rejected the authority of MERS to undertake any action to institute or further a foreclosure including any purported assignment of either the Note or the Deed of Trust from the original lender to any third party, which would include Defendant Bank of New York herein.” *Plaintiff’s Memorandum of Law in Opposition to Defendants’ Motion to Dismiss at pp. 3-4, ¶6.*

Trotter cites this Court to only two Idaho cases; both are cases from the United States Bankruptcy Court for the District of Idaho and are *ne constringo* on this Court.

Defendants argue that MERS was the beneficiary as defined in I.C. § 45-1502 and had the authority to assign its rights to Bank of New York, who then had the right to appoint a successor trustee, Recontrust. Further, Recontrust was vested with the powers of the original trustee, to include the power of sale upon default.

The Idaho Deed of Trust Act, I.C. § 45-1502 et seq. (the “Act”), sets out the guidelines and procedures for carrying out a non-judicial foreclosure proceeding. Beneficiary is defined in I.C. § 45-1502 as “the person named or otherwise designated in a trust deed as the person for whose benefit a trust deed is given, or his successor in interest, and who shall not be the trustee.” Further, in that statute, Trustee is defined as “a person to whom the legal title to real property is conveyed by trust deed, or his successor in interest.”

I.C. § 45-1504(2) provides that:

The trustee may resign at its own election or be replaced by the beneficiary. The trustee shall give prompt written notice of its resignation to the beneficiary. The resignation of the trustee shall become effective upon the recording of the notice of resignation in each county in which the deed of

trust is recorded. If a trustee is not appointed in the deed of trust, or upon the resignation, incapacity, disability, absence, or death of the trustee, or the election of the beneficiary to replace the trustee, the beneficiary shall appoint a trustee or a successor trustee. Upon recording the appointment of a successor trustee in each county in which the deed of trust is recorded, the successor trustee shall be vested with all powers of an original trustee.

This Court finds the following: that MERS was the beneficiary under the Deed of Trust, recorded as Instrument No. 1959776. The Deed of Trust provides “**MERS is the beneficiary under this Security Instrument.**” *See Defendants’ Memorandum of Law in Support of Motion to Dismiss, Exhibit A, at p. 1 (emphasis in original).* Further, Bank of New York is the beneficiary pursuant to the recorded Assignment of Deed of Trust, recorded on August 24, 2009, as Instrument No. 222891600, in which MERS assigned its rights as beneficiary to Bank of New York, pursuant to I.C. § 45-1502(1). Also, as the Beneficiary, Bank of New York was entitled to appoint the successor trustee, in this case Recontrust. Pursuant to I.C. § 45-1504(2), upon recording the Appointment of Successor Trustee in the mortgage records of the county in which the trust deed is recorded, the successor trustee shall be vested with all of the powers of the original trustee. The Appointment of Successor Trustee was recorded in Kootenai County, wherein the Deed of Trust is recorded, on August 24, 2009, as Instrument No. 2228917000. Therefore, as a matter of law, this Court finds that Recontrust was vested with the powers of the original trustee, which includes the power of sale.

Trotter also argues that because the loan was securitized that there may be no default that would give rise to a foreclosure action or sale, and that his loan obligation may have been liquidated. Further, Trotter argues that Defendants have failed to address the matters of credit enhancements, insurances and applicable setoffs to the claimed

amount due as set forth in paragraphs 15 and 16 of the Complaint; thus, there are issues of material fact concerning whether Bank of New York paid 100, 200 or more percent on the loan. This Court finds that Trotter has not cited this Court to any case, statute, contract, or other authority to support the preceding allegations and therefore has not stated a valid cause of action.

Lastly, this Court finds that the Note and Deed of Trust may be sold one or more times without prior notice to the Borrower. Further, the Deed of Trust provides that if the borrower breaches any covenant or agreement contained in the Security Instrument, the Property may be sold. *See Defendants' Memorandum of Law in Support of Motion to Dismiss, Exhibit A at ¶¶20 and 22.*

Alternatively, this Court also dismisses Plaintiff's Complaint on the grounds that he has not made any cognizable legal claims. Noticeably absent from Trotter's Complaint is any argument that he is not in default, that he has made a payment and was not credited, that the amount owed is inaccurate or any other cognizable legal claim. Plaintiff has provided this Court with no controlling case law, statute or rule to support his alleged complaints.

3. Idaho's Deed of Trust Act, I.C. § 45-1502, et seq.

Defendants allege that they have complied with the statutory requirements in carrying out the non-judicial foreclosure. Specifically, Defendants allege that they have complied with I.C. §§ 45-1505(1)-(3) and 45-1506.

Trotter does not argue against this allegation, except to state, "whether Defendants allegedly 'complied with' the Idaho foreclosure procedure is irrelevant to the inquiry and issues raised by the Complaint. *Plaintiff's Memorandum of Law in Opposition to Defendants' Motion to Dismiss at p. 14, ¶ 34.*

In brief, the Act provides that prior to seeking foreclosure, three conditions must be met: (1) the trust deed, all assignments, and the appointment of successor trustee must be recorded in the mortgage records of the county where the property is located; (2) there must be default; and, (3) the trustee or beneficiary must record a notice of default. See I.C. § 45-1505(1)-(3). The Act also provides that following recordation of the Notice of Default, the trustee shall give notice of the trustee's sale by registered or certified mail. See I.C. § 45-1506(2).

The Notice of Trustee's Sale shall set forth: (a) the names of the grantor, trustee and beneficiary in the trust deed; (b) a description of the property covered by the trust deed; (c) the book and page of the mortgage records or the recorder's instrument number where the trust deed is recorded; (d) the default for which the foreclosure is made; (e) the sum owing on the obligation secured by the trust deed; and, (f) the date, time and place of the sale. See I.C. § 45-1506(4)(a)-(f). There is evidence in this record that shows that Defendants have met the requirements of I.C. § 45-1505(1)-(3), 45-1506(2) and 45-1506(4)(a)-(f). Again, Trotter has not opposed, essentially conceding to, Defendants' argument that they have complied with the Act.

III. Plaintiff's Motion to Compel

Plaintiff's Motion to Compel is denied, as it is now moot due to the granting of Defendants' Motion to Dismiss.

IV. Conclusion and Order

Therefore, it appears beyond doubt that the Plaintiff can prove no set of facts in support of his claim that would entitle him to relief, and there exist no triable issues of material fact that preclude this Court from granting dismissal. As such, the stays that

were in effect for the January 11th and February 8th, 2010, foreclosure sales are hereby lifted and Defendants' Motion to Dismiss is granted.

It appears to the Court that good cause for the entry of this Order has been shown; now therefore,

IT IS ORDERED, ADJUDGED, AND DECREED that:

Plaintiff's Complaint fails to state a claim upon which relief can be granted as to all causes of action asserted, and there are no genuine issues of material fact existing. For these reasons, this case is dismissed with prejudice. Plaintiff's Motion to Compel is denied, as it is now moot.

IT IS FURTHER ORDERED that the previously entered stays of foreclosure sales (Temporary Restraining Orders) are hereby lifted and vacated.

IT IS FURTHER ORDERED that Defendants will prepare and submit to this Court a judgment consistent with this Memorandum Decision and Order.

DATED this 2 day of July, 2010.

Lansing L. Haynes
LANSING HAYNES, District Judge

CERTIFICATE OF MAILING

I hereby certify that on the 2 day of July, 2010 a true and correct copy of the foregoing was mailed, postage prepaid, or sent by interoffice mail to:

Monica Flood Brennan
MONICA FLOOD BRENNAN, P.C.
608 Northwest Blvd., STE. 101
Coeur d'Alene, ID 83814
Facsimile: 208-676-8288

Lance E. Olsen
ROUTH CRABTREE OLSEN, P.S.
3535 Factoria Blvd SE, STE. 200
Bellevue, WA 98006
Facsimile: 425-283-5905

Jeff Barnes
W.J. Barnes, P.A.
c/o International Mediation Associates, Inc.
6655 West Sahara Ave., Ste. B200
Las Vegas, Nevada 89146
No fax provided

Daniel English
Clerk of the District Court

By Susi Sverdel
Deputy Clerk

STATE OF IDAHO }
COUNTY OF KOOTENAI } SS
FILED:

Lance E. Olsen, ISB No. 7106
ROUTH CRABTREE OLSEN, P.S.
3535 Factoria Blvd SE, Suite 200
Bellevue, WA 98006
Telephone: (425) 586-1905
Facsimile: (425) 283-5905

2010 JUL 19 PM 2:44

CLERK DISTRICT COURT
Lance E. Olsen
DEPUTY

Attorneys for Defendants, Bank of New York Mellon,
Mortgage Electronic Registration Systems, Inc.
and Recontrust Company

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

VERMONT TROTTER,

Plaintiff,

vs.

BANK OF NEW YORK MELLON F/K/A
BANK OF NEW YORK AS TRUSTEE FOR
THE CERTIFICATEHOLDERS OF
CWALT, INC. ALTERNATIVE LOAN
TRUST 2005-28CB MORTGAGE PASS-
THROUGH CERTIFICATES SERIES 2005-
28CB; MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.; and
RECONTRUST COMPANY, N.A.

Defendants.

Case No. CV 2010-95

**[PROPOSED]
JUDGMENT FOR DEFENDANTS**

Defendants' Bank of New York Mellon fka Bank of New York as Trustee for the Certificate Holders of CWALT, Inc. Alternative Loan Trust 2005-28CB Mortgage Pass-through Certificates Series 2005-28CB, Mortgage Electronic Registration Systems, Inc., and Recontrust Company's ("Defendants") Motion to Dismiss, and Plaintiff Vermont Trotter's ("Plaintiff") Motion to Compel came before the court for hearing on May 26, 2010, the Honorable Lansing L.

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Haynes presiding.

On July 2, 2010, Judge Haynes issued the Memorandum Decision, Findings of Fact and Conclusions of Law and Order re Defendants' Motion to Dismiss and Plaintiff's Motion to Compel. Pursuant to that Memorandum the Court finds that:

A. MERS was the beneficiary under the Deed of Trust, recorded as Instrument No. 1959776.

B. Bank of New York is the beneficiary pursuant to the recorded Assignment of the Deed of Trust, recorded on August 24, 2009, as Instrument No. 222891600.

C. Bank of New York was entitled to appoint the successor trustee, ReconTrust.

D. The successor trustee is vested with all the powers of the original trustee, including the power of sale.

E. The Note and Deed of Trust may be sold one or more times without prior notice to the borrower.

F. Plaintiff failed to cite to any ^{controlling} case, statute, contract or other authority to support his allegations and therefore has not stated a valid cause of action.

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IT IS ORDERED, ADJUDGED, AND DECREED that:

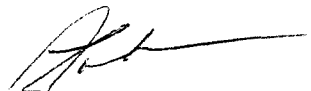
1. Plaintiff's Complaint fails to state a claim upon which relief can be granted as to all causes of action asserted, and for this reason, this case is dismissed with prejudice.
2. Plaintiff's Motion to Compel is denied as moot.
3. The previous entered stays for foreclosure sales are lifted and vacated.

DATED this 16 day of July, 2010.

Lansing L. Haynes
Judge Lansing L. Haynes

Presented by:

ROUTH CRABTREE OLSEN, P.S.

By: 
Lance E. Olsen, ISB No. 7106
Attorneys for Defendants Bank of New
York Mellon, Mortgage Electronic
Registration Systems, Inc. and Recontrust
Company, N.A.


CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this _____ day of July, 2010, a true and correct copy of the foregoing document was served upon the following individuals, by the method indicated below, and addressed as follows:

- U.S. Mail
- Hand Delivered
- Overnight Mail
- Facsimile

Monica Flood Brennan
608 Northwest Boulevard
Suite 101
Coeur D'Alene, ID 83814
Fax: 208-676-8288

Jeff Barnes
W.J. Barnes, P.A.
c/o International Mediation Associates, Inc.
6655 West Sahara Avenue
Suite B200
Las Vegas, NV 89146
Fax: 702-804-8137



Lance E. Olsen

ORIGINAL

STATE OF IDAHO
COUNTY OF KOOTENAI } SS
37622 37626

JUL 27 11:28

DISTRICT COURT

Coyle Victoria

MONICA FLOOD BRENNAN, P.C.
ATTORNEY AT LAW
Spokesman-Review Building
608 Northwest Boulevard, Suite 101
Coeur d'Alene, Idaho 83814
Telephone: 208-665-0088
Facsimile: 208-676-8288
Idaho Bar No. 5324
Attorney for Plaintiff

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

VERMONT TROTTER,
Petitioner/Plaintiff

v.

BANK OF NEW YORK MELLON F/K/A/
BANK OF NEW YORK AS TRUSTEE
FOR THE CERTIFICATEHOLDERS OF
CWALT, INC. ALTERNATIVE LOAN
TRUST 2005-28CB MORTGAGE PASS
THROUGH CERTIFICATES SERIES
2005-28CB, MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC. AND
RECONTRUST COMPANY, N.A.,

Respondent/Defendants.

Case NO. CV2010-095

NOTICE OF APPEAL

TO: THE ABOVE NAMED RESPONDENT(S) BANK OF NEW YORK MELLON,
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AND RECONTRUST
COMPANY AND THE PARTIES' ATTORNEY, LANCE OLSEN AND THE CLERK
OF THE ABOVE-ENTITLED COURT:

NOTICE IS HEREBY GIVEN THAT:

1. The above named Appellant, Vermont Trotter, appeals against the above named Respondents to the Idaho Supreme Court from the Judgment of Dismissal entered in the above-entitled action on the 19th day of July 2010, HONORABLE LANSING HAYNES presiding.
2. That the party has a right to appeal to the Idaho Supreme Court, and the judgment described in Paragraph 1 above are appealable orders under and pursuant to Rule 11(a)(2) or 12(a), I.A.R.
3. A preliminary statement of the issues on appeal which the Appellant intends to assert in the appeal are as follows, and provided, any such list of issues on appeal shall not prevent the Appellant from asserting other issues on appeal;
 - a. Did the District Court err by dismissing the appeal on a 12(b)(6) motion of Failure to State a Claim upon Which Relief can be Granted?
4. No order has been entered sealing any portion of the file.
5. (a) A reporter's transcript is requested?
 - (b) The Appellant requests the preparation of the following portions of the reporter's transcript: The

entire reporter's standard transcript of any and all hearings in this matter.

6. The Appellant requests the following documents to be included in the clerk's record, in addition to those automatically included under Rule 28, I.A.R.

Plaintiff's Motion to Compel Discovery and all other motions filed herein.

7. I certify:

(a) That a copy of this Notice of Appeal has been served on the reporter.

(b) (1) That the Clerk of the District Court will be paid, by the Plaintiff, the estimated fee for preparation of the reporter's transcript as soon as said transcript estimate is prepared.

(c) (1) That the estimated fee for preparation of the clerk's record will be paid upon receipt by the Plaintiff.

(d) (1) That the Appellate filing fee has been paid.

(e) That service has been made upon all parties required to be served pursuant to Rule 20.

DATED this 20 day of August, 2010.


MONICA FLOOD BRENNAN
Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of August, 2010, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

 US Mail

 Interoffice Mail

 Hand Delivered

 X Facsimile (FAX)

Lance Olsen
Routh Crabtree and Olsen
Attorney for Defendants
FAX: 425-~~383~~-5905

Desiree Rafferty
Server

STATE OF IDAHO }
COUNTY OF KOOTENAI } SS
FILED:

2010 SEP 20 PM 1:44

CLERK DISTRICT COURT
Joseph H. Cleland
DEPUTY

MONICA FLOOD BRENNAN, P.C.
ATTORNEY AT LAW
Spokesman-Review Building
608 Northwest Boulevard, Suite 101
Coeur d'Alene, Idaho 83814
Telephone: 208-665-0088
Facsimile: 208-676-8288
Idaho Bar No. 5324
Attorney for Plaintiff

ORIGINAL

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

VERMONT TROTTER,

Petitioner/Plaintiff

v.

BANK OF NEW YORK MELLON F/K/A/
BANK OF NEW YORK AS TRUSTEE
FOR THE CERTIFICATEHOLDERS OF
CWALT, INC. ALTERNATIVE LOAN
TRUST 2005-28CB MORTGAGE PASS
THROUGH CERTIFICATES SERIES
2005-28CB, MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC. AND
RECONTRUST COMPANY, N.A.,

Respondent/Defendants.

Case NO. CV2010-095

AMENDED NOTICE OF APPEAL

TO: THE ABOVE NAMED RESPONDENT(S) BANK OF NEW YORK MELLON, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AND RECONTRUST COMPANY AND THE PARTIES' ATTORNEY, LANCE OLSEN AND THE CLERK OF THE ABOVE-ENTITLED COURT:

NOTICE IS HEREBY GIVEN THAT:

1. The above named Appellant, Vermont Trotter, appeals against the above named Respondents to the Idaho Supreme Court from the Judgment of Dismissal entered in the above-entitled action on the 19th day of July 2010, HONORABLE LANSING HAYNES presiding.
2. That the party has a right to appeal to the Idaho Supreme Court, and the judgment described in Paragraph 1 above are appealable orders under and pursuant to Rule 11(a)(2) or 12(a), I.A.R.
3. A preliminary statement of the issues on appeal which the Appellant intends to assert in the appeal are as follows, and provided, any such list of issues on appeal shall not prevent the Appellant from asserting other issues on appeal;
 - a. Did the District Court err by dismissing the appeal on a 12(b)(6) motion of Failure to State a Claim upon Which Relief can be Granted?
4. No order has been entered sealing any portion of the file.

5. (a) A reporter's transcript is requested?
- (b) The Appellant requests the preparation of the following portions of the reporter's transcript: The entire reporter's transcript of any and all hearings in this matter, including the Temporary Restraining Order hearing on January 21, 2010 and the Motion to Dismiss and the Motion to Compel hearing herein on May 26, 2010.

6. The Appellant requests the following documents to be included in the clerk's record, in addition to those automatically included under Rule 28, I.A.R.

Plaintiff's Motion to Compel Discovery and all other motions filed herein.

7. I certify:

(a) That a copy of this Notice of Appeal has been served on the reporter, Laurie Johnson, via Interoffice mail, Hand Delivery.

(b)(1) That the Clerk of the District Court will be paid, by the Plaintiff, the estimated fee for preparation of the reporter's transcript as soon as said transcript estimate is prepared.

(c)(1) That the estimated fee for preparation of the clerk's record will be paid upon receipt by the Plaintiff.

(d)(1) That the Appellate filing fee has been paid.

(e) That service has been made upon all parties required to be served pursuant ~~to~~ Rule 20.

DATED this 20 day of September, 2010.



MONICA FLOOD BRENNAN
Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on the 20 day of September, 2010, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

US Mail

Hand Delivered

Lance Olsen
Routh Crabtree and Olsen
Attorney for Defendants
FAX: 425-283-5905

Facsimile (FAX)

Court Reporter for
Judge Lansing Haynes
Laurie Johnson
Interoffice Mail

Interoffice Mail



Server

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

VERMONT TROTTER)
)
Petitioner/Plaintiff)
)
 vs)
)
BANK OF NEW YORK MELLON F/K/A)
BANK OF NEW YORK AS TRUSTEE)
FOR THE CERTIFICATEHOLDERS OF)
CWALT, INC. ALTERNATIVE LOAN)
TRUST 2005-28CB MORTGAGE PASS-)
THROUGH CERTIFICATES SERIES)
2005-28CB; MORTGAGE ELECTRONIC)
REGISTRATION SYSTEMS, INC.; and)
RECONTRUST COMPANY, N.A.,)
)
Respondents/Defendants)
)

SUPREME COURT NO.
38022-2010

CLERK'S CERTIFICATE

I, Daniel J. English, Clerk of District Court of the First Judicial District of the State of Idaho, in and for the County of Kootenai, do hereby certify that the above and foregoing Record in the above entitled cause was compiled and bound under my direction as, and is a true, full and correct Record of the pleadings and documents under Rule 28 of the Idaho Appellate Rules.

I certify that the Attorneys for the Appellants and Respondents were notified that the Clerk's Record and Reporter's Transcript were complete and ready to be picked up, or if the attorney is out of town, the copies were mailed by U.S. mail, postage prepaid, on the 12 day of October, 2010.

I do further certify that the Clerk's Record and Reporter's Transcript will be duly lodged with the Clerk of the Supreme Court.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court at Kootenai, Idaho this 12 day of October, 2010.

DANIEL J. ENGLISH
 Clerk of District Court

By: Debra D. Lee
 Deputy Clerk