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Attorney for Plaintiffs
SILVIA BURLEY and
THE CALIFORNIA VALLEY MIWOK TRIBE

UNITED STATE DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SILVIA BURLEY, as chairperson of the
California Valley Miwok Tribe; and THE
CALIFORNIA VALLEY MIWOK TRIBE,
as a federally recognized tribe of the Miwok
People,

Plaintiffs,

v.

ONEWEST BANK, FSB; MERIDIAN
FORECLOSURE SERVICE; DEUTSCHE
BANK NATIONAL TRUST COMPANY,
AS TRUSTEE OF THE INDYMAC INDA
MORTGAGE LOAN TRUST 2007-AR3,
MORTGAGE PASS THROUGH
CERTIFICATES, SERIES 2007-AR-3
UNDER THE POOLING AND SERVICING
AGREEMENT DATED MAY 1, 2007; and
DOES 1 – 10, inclusive,

Defendants

CASE NO.:

COMPLAINT FOR:

1. VIOLATION OF TRIBAL IMMUNITY
2. WRONGFUL FORECLOSURE;
3. BREACH OF IMPLIED COVENANT
OF GOOD FAITH AND FAIR
DEALING;
4. VIOLATION OF *BUS. & PROF. CODE*
SECTION 17200;
5. CANCELLATION OF
INSTRUMENTS
6. CONVERSION
7. CIVIL CONSPIRACY

Jury Trial Demanded

INTRODUCTION

1. The California Valley Miwok Tribe ("Miwok Tribe" or "the Tribe") is a federally

1 recognized tribe of Miwok people in San Joaquin County. They were previously known as Sheep
2 Ranch Rancheria or Sheep Ranch Rancheria of Me-Wuk Indian of California.

3 2. In 1915 the federal government took into trust for the benefit of homeless Indians under
4 the Homeless Indians act .92 acres near the city of Sheep Ranch, California. This parcel came to be
5 known at the Sheep Ranch Ranchero. The number of Miwok living at the Rancheria dwindled in time.
6 In 1934 the Indian Reorganization Act, 25 U.S.C. §§ 461-479 was adopted and there was only one
7 recognized tribal member.
8

9 3. In 1994, Congress enacted the Federally Recognized Indian Tribe List Act of 1994, Pub.
10 Law 103-454, and the Tribe's name was placed on the list of federally recognized tribes. On
11 September 24, 1998, the Superintendent of the Bureau of Indian Affairs Central California Agency
12 (BIA CCA) advised Yakima Dixie, as tribal chairman, that Yakima Dixie, Melvin Dixie, Silvia Burley
13 Rashel Reznor, Anjelica Paulk, and Tristan Wallace “possess[ed] the right to participate in the initial
14 organization of the Tribe.” The BIA letter recommended a general council form of government for
15 the initial organization process. On November 5, 1998, by Resolution # GC-98-01, the Tribe
16 established the tribal council.
17

18 4. On April 20, 1999, Yakima Dixie resigned as tribal chairman. On May 8, 1999, the
19 Tribe held a general election. Yakima Dixie participated in the unanimous vote to elect Silvia Burley
20 as chairperson and to ratify the Tribe's constitution. On June 25, 1999, the BIA CCA recognized Silvia
21 Burley as tribal chairperson with whom government to government business would be conducted.
22

23 5. In 2002 Silvia Burley purchased the subject property in Stockton using tribal money for
24 the use and privilege of the California Valley Miwok Tribe as its tribal office and quitclaimed the
25 Deed to the California Miwok Tribe.
26

27 6. The California State Board of Equalization has accepted and approved the address where
28

1 the tribe conducts tribal government business and is eligible for tax exemption status.

2 7. Tribes continue to have a government to government relationship with the United States
3 and they continue to be sovereign governments with primary control over their citizens and their
4 territory.

5
6 8. Tribal sovereignty ensures that any decisions about the tribes with regard to their
7 property and citizens are made with their participation and consent. Businesses such as banks must
8 recognize tribal sovereignty when doing business with an Indian tribe or its members because the
9 Supreme Court has recognized that Indian tribes have authority to license and regulate non-Indians
10 engaging in commercial transactions with the tribe or its members.

11
12 9. The subject property was wrongfully foreclosed and sold at public auction and title
13 should rightfully be returned to the California Valley Miwok Tribe.

14 JURISDICTION AND VENUE

15
16 10. This case arises under the Indian commerce clause (Article I, Section 8, Clause 3). This
17 court has jurisdiction pursuant to *28 U.S. Code § 1362*. The district courts shall have original
18 jurisdiction of all civil actions, brought by any Indian tribe or band with a governing body duly
19 recognized by the Secretary of the Interior, wherein the matter in controversy arises under the
20 Constitution, laws, or treaties of the United States. Venue is proper in this district as the subject
21 property is located in San Joaquin County, California.

22 PARTIES

23
24 11. Plaintiff Silvia Burley is the officially recognized chairperson of the California Valley
25 Miwok Tribe and was given tribal authorization to purchase the subject property for the California
26 Valley Miwok Tribe.

27
28 12. Plaintiff California Valley Miwok was reaffirmed as a federally recognized tribe by the

1 US Government in 2011. The tribe is one of about a dozen federally recognized Miwok bands in
2 California and is located on aboriginal lands in the San Joaquin Valley. The tribe operates by
3 resolution, a form of government exercised by other tribes and upheld by the Department of the
4 Interior. On November 5, 1998, by Resolution # GC-98-01, the Tribe established the tribal council.
5

6 13. Defendant OneWest Bank, FSB, is a federal savings bank with its corporate office in
7 Pasadena, California. In March 2009, OneWest purchased the assets of IndyMac Bank after IndyMac
8 filed for Chapter 7 bankruptcy.

9 14. Meridian Foreclosure Service is a foreclosure trustee service located in Las Vegas
10 Nevada.
11

12 15. Deutsche Bank National Trust Company is the Trustee of the Indymac INDA Mortgage
13 Loan Trust 2007-AR3, Mortgage Pass Through Certificates, Series 2007-AR-3 Under The Pooling And
14 Servicing Agreement Dated May 1, 2007, securitized trust. Deutsche Bank's US headquarters is in
15 New York, New York.
16

17 **FACTUAL ALLEGATIONS**

18 16. On or about March 29, 2002, the California Valley Miwok Tribe bought the subject
19 property, which has become the tribal land. The subject property was not only owned by the Tribe, but
20 also used as residence and office for the body of the Tribe. A Deed of Trust was recorded in the Official
21 Records of San Joaquin County. The transaction was requested on behalf of the California Valley
22 Miwok Tribe to purchase the subject property using tribal money. The Miwok Tribe issued the down-
23 payment of about \$200,000 to acquire the subject property. The amount of the Note was \$577,500, loan
24 through Heritage Plaza Mortgage by Silvia Burley.
25

26 17. On April 5, 2002, the Governing Body of the California Valley Miwok Tribe enacted a
27 Resolution (R-1-04-05-2002) authorizing Silvia Burley, Tribe Chairperson, to acquire a loan in her
28

1 name on the Tribe's behalf to purchase the subject property. Besides authorizing Burley to purchase
2 and take title to the subject property on the Tribe's behalf, the resolution also stated that the Tribe
3 wished to be added to the title as soon as the lenders would allow; and the Tribe agreed to pay all fees
4 related to the subject property.
5

6 18. Then on July 3, 2006, the Tribal Council Governing Body of the California Valley
7 Miwok Tribe enacted a Resolution (R-2-07-03-2006) authorizing Chairperson Silvia Burley to
8 refinance the Tribal Property from a variable rate loan to a fixed rate loan.
9

10 19. On October 11, 2006, a Deed of Trust was recorded in the Official Records of San
11 Joaquin County. The transaction was requested on behalf of the California Valley Miwok Tribe to
12 refinance the subject property using tribal money.

13 20. One day after the Deed of Trust was recorded on October 12, 2006, a Quitclaim Deed
14 was recorded wherein Silvia Burley quitclaimed the subject property to the California Valley Miwok
15 Tribe.
16

17 21. On March 5, 2007, the Tribal Council Governing Body of the California Valley Miwok
18 Tribe enacted a Resolution (R-1-03-05-227) authorizing the title of the subject property be transferred
19 back into the name of Silvia Burley to be refinanced. The Tribal Counsel stated that it would be fully
20 responsible for all financial obligations associated with the property.
21

22 22. On March 20, 2007, a Quitclaim Deed was recorded by the California Valley Miwok
23 Tribe and granted the Deed of Trust to Silvia Burley for the purpose of refinancing. A Deed of Trust
24 was recorded in the Official Records of San Joaquin County.

25 23. On April 30, 2007, a Deed of Trust was recorded in the Official Records of San Joaquin
26 County. The borrower is listed as Silvia Burley; lender is IndyMac Bank, FSB ("IndyMac"); trustee is
27 First American Title Insurance Co. and MERS is the nominee for lender and lender's successors and
28

1 assigns. The amount of the Note is \$1,000,000. Contrary to the terms explained to the Plaintiffs, the
2 Deed of Trust included an Adjustable Rate Rider and an interest-only period of 10 years, instead of
3 fixed interest for 30 years.

4
5 24. On June 18, 2008, a Quitclaim Deed was recorded in the Official Records of San
6 Joaquin County wherein Silvia Burley quitclaimed the Deed to California Valley Miwok Tribe.

7 25. It is clear that the subject property was owned and paid for by the Tribe, for the Tribe.
8 Subsequently, issues related to the loan origination, refinancing, modification, securitization, and/or
9 foreclosure process arose with the lender, servicer, trustee, and/or beneficiary, including the Plaintiffs
10 in this action, on the Deed of Trust. Coupled with the financial hardship due to withholding the tribal
11 money from the Bureau of Indian Affairs, the Tribe tried to enter into a loss mitigation settlement with
12 the banks; meanwhile, the subject was wrongfully foreclosed.

13
14 26. Plaintiffs could not get a hold of single representative who can address their concerns
15 since Defendants were not proper parties to the subject property, especially given that the Deed of Trust
16 and a Note was flawed since the origination of the loan.

17
18 27. Plaintiff alleges that IndyMac, the lender named in the Note and the Deed of Trust did
19 not fund the transaction, and therefore is not really the lender at all. They acted only as a "nominal
20 lender" named in the Note only to facilitate the creation of a Deed of Trust to secure the note as an
21 alleged loan, when it was not a loan, but rather the receptacle for an asset-backed investment security
22 called IndyMac INDA Mortgage Loan Trust 2007-AR3, Mortgage Pass-Through Certificates, Series
23 2007-AR3. The nominal lender was paid in full, plus a commission. And a Deed of Trust cannot secure
24 an investment security. Therefore, the Deed of Trust is void.

25
26 28. Since IndyMac never funded the loan, there was not any consideration, thus making the
27 Deed of Trust void. Since IndyMac is not really a lender, it has no interest in the property and MERS
28

1 has no authority because it is not an agent for the lender or successor in interest since there is no lender
2 or successor for consideration. All subsequent Assignments and Substitutions are also void ab initio
3 and invalid.

4
5 29. Plaintiffs allege that even if the Note was sold (of which there is no record) it would be
6 impossible for MERS to act purportedly as Nominee for IndyMac in 2009 when IndyMac had no
7 interest since 2007 and legally could not have purportedly assigned the Deed of Trust along with the
8 Note to the securitized Trust. Such a transfer is invalid and a fraud upon Plaintiff and the court. There is
9 also no consideration as the Note is paid off. Without physical transfer, the sale of the Note could be
10 invalid as a fraudulent conveyance. *CC §3440* or as unperfected *Cal. Com. Code §§9313-9314*.

11
12 30. MERS did not have an assignable interest in the Note and Deed of Trust. Long standing
13 law in the State of California automatically renders null and void any assignment involving an interest
14 in real property by an agent that fails to disclose its principal. In *Re Walker*, Case No. 10-21656-E-11,
15 2010 Bankr., the court found that MERS acted “only as nominee” under the Deed of Trust and there
16 was no evidence that the note was transferred. The opinion also provides that “several courts have
17 acknowledged that MERS is not the owner of the underlying note and therefore could not transfer the
18 note, the beneficial interest in the deed of trust, or foreclose on the property secured by the deed”, citing
19 well-known cases of *In Re Vargas* 396 B.R. 511, 520 (Bnkr. C.D. Cal. 2008); *Landmark Nat’l Bank v.*
20 *Kesler*, 216P.3d 158 (Kan. 2009); *LaSalle Bank v. Lamy*, 824 N.Y.S.2d 769 (N.Y. Sup. Ct. 2006).

21
22 31. On March 9, 2009, several months after IndyMac wrongly acted in a capacity to assign a
23 new Substitution of Trustee, an Assignment of Deed of Trust was recorded in the Official Records of
24 San Joaquin County wherein MERS assigned the Deed of Trust to IndyMac Bank.

25
26 32. Several months before the Assignment on January 23, 2009, a Substitution of Trustee
27 was recorded in the Official Records of San Joaquin County. The Substitution was signed by IndyMac
28

1 Bank and substituted Quality Loan Service as the substituted trustee.

2 33. Since this time, the California Valley Miwok Tribe has been waiting for funds that
3 amount to several million which it is owed from the Revenue Sharing Trust Fund wherein other
4 California tribes contribute to a share of gaming revenues to help tribes without casinos. The Bureau of
5 Indian Affairs has been withholding funds that the California Miwok Tribe needs in order to pay for
6 their land. The California Gambling Control Commission (CGCC) has approximately \$10 million in
7 escrow for the Tribe. The Miwok Tribe does not have a casino, so under Indian Gaming law they are
8 entitled to revenue from other tribes that do have casinos. The matter is currently with the 4th Appellate
9 District Division 1, Case No. D064271, *California Valley Miwok Tribe v. California Gambling Control*
10 *Commission*. (7/10/2013)

13 34. On February 19, 2010, a Notice of Default was recorded in the Official Records of San
14 Joaquin County. The Notice of Default was signed by Quality Loan Service Corp on behalf of
15 OneWest Bank. The amount in of default was listed as \$133,237.98, which is excessive; however, it is
16 less than the amount that is owed to Plaintiffs.

18 35. On February 24, 2010, the General Council Governing Body of the California Valley
19 Miwok Tribe enacted a Resolution (R-1-02-24-2010) reaffirming Silvia Burley as Chairperson of the
20 Tribe for the purpose of conducting government-to-government relations with the United States, the
21 State of California, and all of their instrumentalities and subdivisions.

23 36. On June 21, 2010, an Assignment of Deed of Trust was recorded in the Official Records
24 of San Joaquin County. The Assignment is signed by IndyMac and claims to grant the Deed of Trust to
25 Deutsche Bank National Trust Company, as Trustee of the IndyMac INDA Mortgage Loan Trust 2007-
26 AR3, Mortgage Pass-Through Certificates, Series 2007-AR3 under the Pooling and Servicing
27 Agreement dated May 1, 2007. The Assignment is not valid as the trust closed in 2007 and could not be
28

1 assigned in 2010 to the alleged securitized trust.

2 37. Plaintiffs allege that Defendants were involved in a failed attempt to securitize the Deed
3 of Trust into Indymac INDA Mortgage Loan Trust 2007-AR3, Mortgage Pass Through Certificates,
4 Series 2007 AR-3 Under The Pooling And Services Agreement Dated May 1, 2007. In order for the
5 Deed of Trust to be a part of the securitized trust, the entities involved were required to follow various
6 agreements and established laws, including the trust agreement that governed the creation of the trust.
7 The cutoff date of the trust is May 1, 2007, and the closing date is May 30, 2007. Only loans that were
8 placed in the trust between May 1, 2007, and May 30, 2007, are eligible for the named Trust. Plaintiffs
9 allege that the entities involved in the attempted securitization failed to adhere to the requirements of
10 the trust agreement necessary to properly assign the Deed of Trust into the trust which makes the
11 assignment invalid.
12

13
14 38. This fatal defect renders Defendants third-party strangers to the underlying alleged debt
15 obligation without the power or right to demand payment, declare default, negotiate or foreclose on the
16 subject property. Regardless, Defendants represented that they would work out options with Plaintiffs
17 to avoid foreclosure during the pending federal case with CGCC.
18

19 39. Then on June 24, 2013, a Substitution of Trustee was recorded in the Official Records of
20 San Joaquin County. The Substitution is executed by Carla A. Hardin, Assistant Secretary of the
21 Deutsche Bank National Trust Company, as Trustee of IndyMac INDA Mortgage Loan Trust 2007-
22 AR3, Mortgage Pass Through Certificates, Series 2007-AR3 under the Pooling and Servicing
23 Agreement dated May 1, 2007, by OneWest Bank FSB as attorney in fact and named Meridian
24 Foreclosure Service as the substituted trustee under the Deed of Trust.
25

26 40. On September 25, 2013, a Notice of Trustee's Sale was recorded in the Official Records
27 of San Joaquin County. The amount listed as the unpaid balance is excessive. The Deed of Trust has
28

1 \$1,000,000 as the amount of the loan, but the Notice of Trustee's sale states that the unpaid balance and
2 other charges are \$1,444,912.11. The differences in the amounts are \$444,912.11.

3
4 41. On November 6, 2013, a Trustee's Deed Upon Sale was recorded in the Official Records
5 of San Joaquin County. The Trustee's Deed Upon Sale claims that the subject property was sold at
6 public auction back to Deutsche Bank National Trust Company, as Trustee for the securitized trust. The
7 amount claimed to be paid by the grantee was \$580,004.50. The amount of the unpaid debt is claimed
8 to be \$1,451,550.05. This amount of \$451,550.05 is well over the amount of the Note.

9
10 42. Not only did Defendants wrongly foreclose on the subject property, they initiated an
11 unlawful detainer action against Plaintiff Silvia Burley who is not just an individual residing at the
12 subject property, but rather an official, an arm of the tribe. Further, Silvia Burley is not the only
13 member and/or official who are in possession of the subject property. Most importantly, the subject
14 property has been recognized as a tribal land, extending the tribal sovereign immunity.

15
16 43. Defendants conveniently chose to ignore the existence of sovereign immunity and the
17 governing body of the Tribe at the subject property. Tribal sovereign immunity is a well-established
18 doctrine of federal Indian law by the Congress. There is nothing in California's organic act (9 Stat.
19 452), nor in any other federal law, which grants California any special power over Indian tribes. *See*
20 *Long v. Chemehuevi Indian Reservation* (1981) 115 Cal.App.3d 853. It is well established that Indian
21 tribes possess sovereign immunity from suit that existed at common law. *Rosebud Sioux Tribe v. A & P*
22 *Steel, Inc.*, 874 F.2d 550, 552 (8th Cir.1989). Presently, sovereign immunity is the strongest defense to
23 litigation attacks against tribal treasuries and the assertion of state regulatory authority on tribal lands.
24 *See Oklahoma Tax Comm'n v. Citizen Band of Potawatomi*, 498 U.S. 505 (1991). "[I]n the absence of
25 federal authorization, tribal immunity, like all aspects of tribal sovereignty, is privileged from
26 diminution by the States." *Three Affiliated Tribes v. Wold Engineering* (1986) 476 U.S. 877, 890.
27
28

1 48. The Supreme Court lawsuit had its origin in a dispute between the State of Michigan and
2 the Bay Mills Indian Community over whether a particular location constituted Indian lands eligible for
3 gaming under the Indian Gaming Regulatory Act, but then turned into a much larger legal battle over
4 the rights of all Indian tribes across the country. The majority emphasized that tribal sovereignty is an
5 inherent right of Indian tribes recognized in a string of Supreme Court decisions from the founding of
6 the United States. The Court held that 25 U.S.C. § 2710(d)(7)(A)(ii) does not waive tribal sovereign
7 immunity for claimed compact violations not on Indian land, and confirmed that Indian tribes continue to
8 enjoy sovereign immunity, even for off-reservation commercial conduct.
9

10
11 49. Sovereign immunity protects not only the tribe but also persons acting as arms of the
12 tribe. Silva Burley acted on behalf of the Tribe, with a resolution from the Tribe and conveyed title to
13 the Tribe. The subject property has been owned and possessed by the Miwok Tribe, in which the Tribe
14 sustains their livelihood and maintains their governing body. The subject property has been and is
15 currently used as a tribal land; been served as a tribal office, housing, and storage for the Tribe. The
16 subject property has been and currently is under the direct management and control by the Tribal
17 governing body.
18

19 50. The Tribe conducts business from the subject property with such groups as Health &
20 Human Services, Indian Child Welfare Act (ICWA); Native American Graves Protection and
21 Repatriation Act (NAGPRA); Miwok Cultural Preservation, Miwok Central Valley and Northern Sierra
22 Miwok Language Retention; Miwok Arts & Crafts; Emergency Management, FEMA; Tribal
23 Enrollment, USDA Food Distribution Program on Indian Reservations (FDPIR); US Fish and Wildlife,
24 US Forestry; City and County Planning Departments; California Tribal Water Issues; and local
25 community outreach.
26

27 51. The California Miwok's tribal sovereign immunity extends to its governmental and
28

1 commercial activities, both on reservation and off so any suit against Silvia Burley and the tribe should
2 be dismissed. Plaintiff alleges Defendant's conduct caused them to suffer from the loss or encumbrance
3 of their primary residence, place of business and commercial activities of the tribe.
4

5 **SECOND CAUSE OF ACTION**

6 **Wrongful Foreclosure Against All Defendants**

7 52. Plaintiff incorporates herein by reference the allegations made above as though fully set
8 forth herein.

9 53. In California, the tort of wrongful foreclosure requires: (1) a legally owed duty to the
10 Plaintiff(s) by the foreclosing party (2) a breach of that duty (3) a causal connection between the breach
11 of that duty and the injury the Plaintiff(s) sustained, and (4) damages. California courts have further
12 clarified this cause of action by stating: "We are inclined however, to believe that with respect to real
13 property the Murphy case was articulating a rule that has been applied in other jurisdictions. That rule
14 is that a trustee or mortgagee may be liable to the trustor or mortgagor for damages sustained where
15 there has been an illegal, fraudulent or willfully oppressive sale of property under a power of sale
16 contained in a mortgage or deed of trust." *Munger v. Moore*, 11 Cal. App. 3d 1, 7, 89 Cal. Rptr. 323,
17 326 (Cal. Ct. App. 1970).
18
19

20 54. Plaintiffs allege that Defendants were involved in a failed attempt to securitize the Deed
21 of Trust into Indymac INDA Mortgage Loan Trust 2007-AR3, Mortgage Pass Through Certificates,
22 Series 2007 AR-3 Under The Pooling And Services Agreement Dated May 1, 2007. In order for the
23 Deed of Trust to be a part of the securitized trust, the entities involved were required to follow various
24 agreements and established laws, including the trust agreement that governed the creation of the trust.
25 The cutoff date of the trust is May 1, 2007, and the closing date is May 30, 2007. Only loans that were
26 placed in the trust between May 1, 2007, and May 30, 2007, are eligible for the named Trust. Plaintiffs
27
28

1 allege that the entities involved in the attempted securitization failed to adhere to the requirements of
2 the trust agreement necessary to properly assign the Deed of Trust into the trust which makes the
3 assignment invalid.

4
5 55. This fatal defect renders Defendants third-party strangers to the underlying alleged debt
6 obligation without the power or right to demand payment, declare default, negotiate or foreclose on the
7 subject property. Regardless, Defendants represented that they would work out options with Plaintiffs
8 to avoid foreclosure during the pending federal case with CGCC.

9
10 56. The California Valley Miwok Tribe has been waiting for funds that amount to several
11 million which it is owed from the Revenue Sharing Trust Fund wherein other California tribes
12 contribute to a share of gaming revenues to help tribes without casinos. The Bureau of Indian Affairs
13 has been withholding funds that the California Miwok Tribe needs in order to pay for their land. The
14 California Gambling Control Commission (CGCC) has approximately \$10 million in escrow for the
15 Tribe.

16
17 57. Defendants owe a duty to Plaintiff Burley as the federally recognized chairperson for the
18 California Miwok Tribe. The Tribe is a sovereign Indian nation and therefore is immune from state
19 laws and administrative actions that would interfere with the rights of self-government and sovereign
20 immunity. See *Cherokee Nation v. Georgia*, 30 U.S. 1, 16 (1831).

21
22 58. Defendants breached their duty Silvia Burley and the California Miwok Tribe by
23 wrongly foreclosing on the subject property and initiated an unlawful detainer action against Plaintiff
24 Silvia Burley who is not just an individual residing at the subject property, but rather an official, an arm
25 of the tribe. Further, Silvia Burley is not the only member and/or official who are in possession of the
26 subject property. Most importantly, the subject property has been recognized as a tribal land, extending
27 the tribal sovereign immunity.
28

59. Defendants conveniently chose to ignore the existence of sovereign immunity and the governing body of the Tribe at the subject property and willfully conducted an oppressive sale of property under a power of sale contained in a mortgage or deed of trust against tribal sovereign immunity is a well-established doctrine of federal Indian law by the Congress.

60. The breach of this duty has caused Silvia Burley and the California Miwok Tribe to suffer damages such as money spent for attorneys, litigation and loss of their rights to their tribal land.

61. As a result of the above-described breaches and wrongful conduct by Defendants, Plaintiff has suffered general and special damages in an amount according to proof at trial, but not less than \$1,000,000.

THIRD CAUSE OF ACTION

Violations of Good Faith and Fair Dealing Against All Defendants

62. Plaintiffs hereby re-allege and incorporate by reference the foregoing paragraphs as if set forth fully herein.

63. In every contract there is an implied covenant of good faith and fair dealing. (*Carma Developers (Cal.), Inc. v. Marathon Development California, Inc.* (1992) 2 Cal.4th 342, 371–372.) This covenant requires that neither party do anything to injure the right of the other party to receive the benefits of the agreement. (*Andrews v. Mobile Aire Estates* (2005) 125 Cal. App. 4th 578, 589 [citations omitted].) The scope of conduct that this covenant prohibits is circumscribed by the purposes, the parties’ legitimate expectations, and the express terms of the contract. (*Carma, supra*, 2 Cal.4th at 373.)

64. “All of the following elements must exist to state a claim for breach of the duty of good faith and fair dealing in a contract action: (1) A contractual relationship between the parties; (2) Plaintiff’s performance, or excuse from performance, of the obligations under the contract; (3) An

1 allegation that the defendant unfairly prevented plaintiff from receiving the benefits that plaintiff was
2 entitled to receive under the contract; and (4) An allegation that defendant's conduct resulted in harm to
3 the plaintiff.” (Matthew Bender Practice Guide: California Contract Litigation.)

4
5 65. “[T]ort recovery for breach of the covenant is available only in limited circumstances,
6 generally involving a special relationship between the contracting parties, such as the relationship
7 between an insured and its insurer.” (*Bionghi v. Metropolitan Water Dist. of So. California* (1999) 70
8 Cal.App.4th 1358, 1370.)

9
10 66. A contractual relationship existed between Silvia Burley, The California Miwok Tribe
11 and Defendants.

12 67. The California Valley Miwok Tribe has been waiting for funds that amount to several
13 million which it is owed from the Revenue Sharing Trust Fund wherein other California tribes
14 contribute to a share of gaming revenues to help tribes without casinos. The Bureau of Indian Affairs
15 has been withholding funds that the California Miwok Tribe needs in order to pay for their land. The
16 California Gambling Control Commission (CGCC) has approximately \$10 million in escrow for the
17 Tribe.
18

19 68. Defendants owe a duty to Plaintiff Burley as the federally recognized chairperson for the
20 California Miwok Tribe. The Tribe is a sovereign Indian nation and therefore is immune from state
21 laws and administrative actions that would interfere with the rights of self-government and sovereign
22 immunity. See *Cherokee Nation v. Georgia*, 30 U.S. 1, 16 (1831).
23

24 69. Defendants breached their duty Silvia Burley and the California Miwok Tribe by
25 wrongly foreclosing on the subject property and initiated an unlawful detainer action against Plaintiff
26 Silvia Burley who is not just an individual residing at the subject property, but rather an official, an arm
27 of the tribe. Further, Silvia Burley is not the only member and/or official who are in possession of the
28

1 subject property. Most importantly, the subject property has been recognized as a tribal land, extending
2 the tribal sovereign immunity.

3 70. Accordingly, Plaintiffs demand an award of damages for their proximate losses in an
4 amount to be determined at trial.
5

6 **FOURTH CAUSE OF ACTION**

7 **Violation of *Business and Professions Code Section 17200* Against All Defendants**

8 71. Plaintiffs hereby re-allege and incorporate by reference the foregoing paragraphs as if
9 set forth fully herein.
10

11 72. *Bus. & Prof. Code § 17200* prohibits “unfair competition” which refers to “any
12 unlawful, unfair or fraudulent business act or practice. . . .”

13 73. To have standing to sue under this section, a person must “(1) establish a loss or
14 deprivation of money or property sufficient to qualify as injury in fact, i.e., *economic injury*, and (2)
15 show that the economic injury was the result of, i.e., *caused by*, the unfair business practice”
16 (*Kwikset Corp. v. Superior Court* (2011) 51 Cal.4th 310, 322 [italics in original]); *Bus. & Prof. Code §*
17 *17204.*) There are “innumerable ways” to show economic injury. (*Kwikset Corp., supra*, 51 Cal.4th at
18 323.) However, a plaintiff will not satisfy the causation prong if she would have suffered “the same
19 harm whether or not a defendant complied with the law.” (*Jenkins v. JP Morgan Chase Bank, N.A.*
20 (2013) 216 Cal.App.4th 497, 522 [citation omitted].)
21
22

23 74. The California Valley Miwok Tribe has been waiting for funds that amount to several
24 million which it is owed from the Revenue Sharing Trust Fund wherein other California tribes
25 contribute to a share of gaming revenues to help tribes without casinos. The Bureau of Indian Affairs
26 has been withholding funds that the California Miwok Tribe needs in order to pay for their land. The
27
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1 California Gambling Control Commission (CGCC) has approximately \$10 million in escrow for the
2 Tribe.

3 75. Defendants owe a duty to Plaintiff Burley as the federally recognized chairperson for the
4 California Miwok Tribe. The Tribe is a sovereign Indian nation and therefore is immune from state
5 laws and administrative actions that would interfere with the rights of self-government and sovereign
6 immunity. See *Cherokee Nation v. Georgia*, 30 U.S. 1, 16 (1831).
7

8 76. Defendants breached their duty Silvia Burley and the California Miwok Tribe by
9 wrongly foreclosing on the subject property and initiated an unlawful detainer action against Plaintiff
10 Silvia Burley who is not just an individual residing at the subject property, but rather an official, an arm
11 of the tribe. Further, Silvia Burley is not the only member and/or official who are in possession of the
12 subject property. Most importantly, the subject property has been recognized as a tribal land, extending
13 the tribal sovereign immunity.
14

15 77. Plaintiffs allege that as direct and proximate result of the aforementioned acts,
16 Defendants have prospered and benefitted from Plaintiffs by collecting mortgage payments and fees for
17 foreclosure related services, and have been unjustly enriched from their act of foreclosing on Plaintiffs'
18 home and government office and did not do so in compliance with applicable laws.
19

20 78. By reason of the foregoing, Defendants have been unjustly enriched and should be
21 required to disgorge their illicit profits and/or make restitution to Plaintiffs and other California
22 consumers who have been harmed, and/or be enjoined from continuing in such practices pursuant to
23 *California Business & Professions Code Sections 17203 and 17204*. Moreover, as a result of the
24 aforementioned acts and conduct, Plaintiffs have lost money and property and suffered injury in fact,
25 and other members of the public falling victim to Defendants' schemes are likely to be injured.
26
27
28

1 79. The harm to Plaintiffs and to members of the general public outweighs the utility of
2 Defendants' policy and practices. Consequently, their policy and practices constitute an unlawful
3 business act or practice within the meaning of *Business and Professions Code §17200*.

4 80. Further, the foregoing conduct threatens an incipient violation of a consumer law, or
5 violates the policy or spirit of such law or otherwise significantly threatens or harms competition.
6

7 81. Defendants' practices described above are likely to mislead the general public, and
8 therefore, constitute a fraudulent business act of practice within the meaning of *Business and*
9 *Professions Code §17200*. The Defendants' unfair, unlawful, and fraudulent business practices and
10 false and misleading advertising present a continuing threat to members of public in that other
11 consumers will be defrauded into having their property improperly sold at foreclosure. Plaintiff and
12 other members of the general public have no other adequate remedy of law.
13

14 82. Plaintiffs are therefore entitled to injunctive relief and attorney's fees as available under
15 *California Business and Professions Code Sec. 17200* and related sections. These acts and practices, as
16 described in the previous paragraphs, are unfair and violate Business and Professions Code § 17200.
17

18 **FIFTH CAUSE OF ACTION**

19 **Cancellation of Instruments Against All Defendants**

20 83. Plaintiffs hereby re-allege and incorporate by reference the foregoing paragraphs as if
21 set forth fully herein.
22

23 84. A court may cancel a written instrument if it creates a reasonable apprehension that, if
24 left outstanding, may cause serious injury to a person against whom it is void or voidable. (*Civ. Code §*
25 *3412*.)

26 85. On October 11, 2006, a Deed of Trust was recorded in the Official Records of San
27 Joaquin County. The transaction was requested on behalf of the California Valley Miwok Tribe to
28

1 refinance the subject property using tribal money. The amount of the Note was \$555,000.00

2 86. One day after the Deed of Trust was recorded on October 12, 2006, a Quitclaim Deed
3 was recorded wherein Silvia Burley quitclaimed the subject property to the California Valley Miwok
4 Tribe.
5

6 87. On March 5, 2007, the Tribal Council Governing Body of the California Valley Miwok
7 Tribe enacted a Resolution (R-1-03-05-227) authorizing the title of the subject property be transferred
8 back into the name of Silvia Burley to be refinanced. The Tribal Counsel stated that it would be fully
9 responsible for all financial obligations associated with the property.
10

11 88. On March 20, 2007, a Quitclaim Deed was recorded by the California Valley Miwok
12 Tribe and granted the Deed of Trust to Silvia Burley for the purpose of refinancing. A Deed of Trust
13 was recorded in the Official Records of San Joaquin County.

14 89. On April 30, 2007, a Deed of Trust was recorded in the Official Records of San Joaquin
15 County. The borrower is listed as Silvia Burley; lender is IndyMac Bank, FSB ("IndyMac"); trustee is
16 First American Title Insurance Co. and MERS is the nominee for lender and lender's successors and
17 assigns. The amount of the Note is \$1,000,000. Contrary to the terms explained to the Plaintiffs, the
18 Deed of Trust included an Adjustable Rate Rider and an interest-only period of 10 years, instead of
19 fixed interest for 30 years.
20

21 90. On June 18, 2008, a Quitclaim Deed was recorded in the Official Records of San
22 Joaquin County wherein Silvia Burley quitclaimed the Deed to California Valley Miwok Tribe.
23

24 91. It is clear that the subject property was owned and paid for by the Tribe, for the Tribe.
25 Subsequently, issues related to the loan origination, refinancing, modification, securitization, and/or
26 foreclosure process arose with the lender, servicer, trustee, and/or beneficiary, including the Plaintiffs
27 in this action, on the Deed of Trust. Coupled with the financial hardship due to withholding the tribal
28

1 money from the Bureau of Indian Affairs, the Tribe tried to enter into a loss mitigation settlement with
2 the banks; meanwhile, the subject was wrongfully foreclosed.

3
4 92. Defendants owe a duty to Plaintiff Burley as the federally recognized chairperson for the
5 California Miwok Tribe. The Tribe is a sovereign Indian nation and therefore is immune from state
6 laws and administrative actions that would interfere with the rights of self-government and sovereign
7 immunity. See *Cherokee Nation v. Georgia*, 30 U.S. 1, 16 (1831).

8
9 93. Defendants breached their duty Silvia Burley and the California Miwok Tribe by
10 wrongly foreclosing on the subject property and initiated an unlawful detainer action against Plaintiff
11 Silvia Burley who is not just an individual residing at the subject property, but rather an official, an arm
12 of the tribe. Further, Silvia Burley is not the only member and/or official who are in possession of the
13 subject property. Most importantly, the subject property has been recognized as a tribal land, extending
14 the tribal sovereign immunity.

15
16 94. By virtue of Defendants' willful and wrongful conduct as herein alleged above,
17 Plaintiffs are entitled to general and special damages according to proof at trial, but not less than
18 \$1,000,000, as well as punitive and exemplary damages as determined by this Court.

19 **SIXTH CAUSE OF ACTION**

20 **Conversion**

21
22 95. Plaintiffs hereby re-allege and incorporate by reference the foregoing paragraphs as if
23 set forth fully herein.

24 96. Conversion is the wrongful exercise of dominion over the personal property of another.
25 [De Vries v. Brumback (1960) 53 Cal. 2d 643, 647 (conversion is "an act of willful interference with
26 personal property, done without lawful justification, by which any person entitled thereto is deprived of
27
28

the use and possession of the personal property”); Steele v. Marsciano (1894) 102 Cal. 666, 669; 5
Witkin Summary of California Law Torts § 699 (10th ed. 2005)]

97. Elements: (i) plaintiff’s ownership or right to possession of personal property; (ii)
defendant’s disposition of property in a manner inconsistent with plaintiff’s property rights; and (iii)
damages. [Fremont Indem. Co. v. Fremont Gen. Corp. (2007) 148 Cal. App. 4th 97, 119; Witkin § 699]

98. It is clear that the subject property was owned and paid for by the Tribe, for the Tribe.
Subsequently, issues related to the loan origination, refinancing, modification, securitization, and/or
foreclosure process arose with the lender, servicer, trustee, and/or beneficiary, including the Plaintiffs
in this action, on the Deed of Trust. Coupled with the financial hardship due to withholding the tribal
money from the Bureau of Indian Affairs, the Tribe tried to enter into a loss mitigation settlement with
the banks; meanwhile, the subject was wrongfully foreclosed by Defendants.

99. Plaintiffs should be awarded Money damages at the value at the time of conversion with
interest; or an amount sufficient to indemnify the party injured for the loss which is the natural,
reasonable, and proximate result of the wrongful act, which could have been avoided with the proper
degree of prudence. Additionally, Plaintiffs are entitled to fair compensation for the time and money
spent in pursuit of the property. [Cal. Civ. Code § 3336] Exemplary or punitive damages should be
awarded because of the malice, fraud, or oppression of the Defendants.. [Cal. Civ. Code § 3357]

SEVENTH CAUSE OF ACTION

Civil Conspiracy Against All Defendants

100. Plaintiffs hereby re-allege and incorporate by reference the foregoing paragraphs as if
set forth fully herein.

101. "The elements of a civil conspiracy are '(1) the formation and operation of the conspiracy; (2) the wrongful act or acts done pursuant thereto; and (3) the damage resulting.' " (*Mosier v. Southern California Physicians Insurance Exchange* (1998) 63 Cal.App.4th 1022, 1048 [74 Cal.Rptr.2d 550], internal citations omitted.)

102. Plaintiffs allege that Defendants were involved in a failed attempt to securitize the Deed of Trust into Indymac INDA Mortgage Loan Trust 2007-AR3, Mortgage Pass Through Certificates, Series 2007 AR-3 Under The Pooling And Services Agreement Dated May 1, 2007. In order for the Deed of Trust to be a part of the securitized trust, the entities involved were required to follow various agreements and established laws, including the trust agreement that governed the creation of the trust. The cutoff date of the trust is May 1, 2007, and the closing date is May 30, 2007. Only loans that were placed in the trust between May 1, 2007, and May 30, 2007, are eligible for the named Trust.

103. This fatal defect renders Defendants third-party strangers to the underlying alleged debt obligation without the power or right to demand payment, declare default, negotiate or foreclose on the subject property. Regardless, Defendants represented that they would work out options with Plaintiffs to avoid foreclosure during the pending federal case with CGCC.

104. Not only did Defendants wrongly foreclose on the subject property, they initiated an unlawful detainer action against Plaintiff Silvia Burley who is not just an individual residing at the subject property, but rather an official, an arm of the tribe. Further, Silvia Burley is not the only member and/or official who are in possession of the subject property. Most importantly, the subject property has been recognized as a tribal land, extending the tribal sovereign immunity.

105. Defendants conveniently chose to ignore the existence of sovereign immunity and the governing body of the Tribe at the subject property. Tribal sovereign immunity is a well-established doctrine of federal Indian law by the Congress.

106. Defendants worked together in common design and conspiracy, with actual intent to hinder and delay any agreeable resolution for a reasonable loan modification. Defendants are responsible as a joint tortfeasors for all damages ensuing from the wrong by hindering and damaging Plaintiffs in this matter regardless of the degree of their activity.

107. Defendants are liable for the damages that have been sustained by Plaintiffs. Defendants should be required to pay damages such as time, money and resources spent on negotiations and litigation.

PRAYER FOR RELIEF

Wherefore, Plaintiffs demand judgment against Defendants as follows:

1. For an order rescinding the Notice of Default, Notice of Trustee's Sale recorded against Plaintiffs and the Subject Property;
2. For an order holding Defendants liable for their wrongful foreclosure practices and other violations, awarding Plaintiffs compensation for all damages sustained in an amount to be proven at trial, including an award for past and future economic and compensatory damages, past and future non-economic, punitive and/or exemplary damages, and other damages;
3. For a declaration that Plaintiffs are the true and rightful owner of the subject property;
4. For issuance of an order cancelling the wrongfully recorded documents.
5. To vacate the Trustee's Deed Upon Sale;
6. To vacate and set aside the foreclosure sale;
7. To quiet title in favor of Plaintiffs and against Defendants;
8. For civil penalties pursuant to statute;
9. For interest to be calculated at the maximum amount allowable by law, including pre- and post-judgment interest for damages;

10. For reasonable attorney's fees;

11. For reasonable costs of suit incurred; and

12. For such other reliefs as this Court deems just and proper.

DATED: June 3, 2014

SAUNDERS LAW GROUP, LTD.

By: 

GARY SAUNDERS, ESQ.

Attorney for Plaintiffs

SILVIA BURLEY, as chairperson of the California
Valley Miwok Tribe; and THE CALIFORNIA VALLEY
MIWOK TRIBE, as a federally recognized tribe of the
Miwok People

AFFIDAVIT AND VERIFICATION
(Civ. Proc. Code § 2015.5)

I, SILVIA BURLEY, as chairperson of the California Valley Miwok Tribe; and THE CALIFORNIA VALLEY MIWOK TRIBE, as a federally recognized tribe of the Miwok People, Plaintiffs bring this lawsuit against ONEWEST BANK, FSB; MERIDIAN FORECLOSURE SERVICE; DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE OF THE INDYMAC INDA MORTGAGE LOAN TRUST 2007-AR3, MORTGAGE PASS THROUGH CERTIFICATES, SERIES 2007-AR-3 UNDER THE POOLING AND SERVICES AGREEMENT DATED MAY 1, 2007; and DOES 1 – 10, inclusive,

I have read the foregoing verified first amended complaint and know the contents thereof. I certify that the same is true to the best of my knowledge, information, and belief, formed after an inquiry reasonable under the circumstances.

This lawsuit is not being presented primarily for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

The claims, defenses, and other legal contentions therein are warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.

The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery. The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

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

1 DATED: June 2, 2014

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3 SILVIA BURLEY
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