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IN THE DISTRICT COURT OF NEVADA FOR CLARK COUNTY

JEAN MILLER,

Plaintiff,

and

COUNTRYWIDE HOME LOANS, AKA
BANK OF AMERICA;
BANK OF NEW YORK MELLON BANK;
RECONTRUST COMPANY;
MERSCORP, INC., a Virginia Corporation,
MORTGAGE ELECTRONIC SYSTEMS,
INC., subsidiary of MERSCORP, Inc., a
Delaware corporation; AND DOES I
individuals 1 to 100, Inclusive; and ROES
Corporations 1 to 30

Defendants

Case No: A-11- 642162-C

Dept. XVII

DECLARATION OF COLIN DAVIS

INVESTIGATIVE EXPERT TESTIMONY

I, Colin Davis, hereby declare and state:

1. My name is Colin E. Davis. I am a resident of Pacheco, California. I declare that the following is true and correct to the best of my knowledge, and that I would testify to the statements contained herein if called upon to do so.
2. I am a forensic investigator in the field of residential mortgage foreclosure proceedings with an emphasis on mortgage loan securitization. I have over 3000 hours of time logged in

DECLARATION OF COLIN DAVIS

1 research, with much of this time in the area of securitization. I work regularly with mortgage
2 loan auditors, real estate attorneys and various experts in the field including those in the area of
3 wholesale mortgage lending and securitization. I supply expert reports and opinions to be used
4 in litigation where securitization of mortgage loans is a relevant issue. I operate the website
5 <http://www.foreclosurediscovery.net>
6

7 **Introduction and Overview:**

8 3. I have been contacted by the Plaintiff, Jean Miller, and asked to review the
9 documentation recorded in the Clark county recorder's office and that which was provided to
10 Ms. Miller privately.

11 4. I note that there are two recorded assignments of deed of trust. Both assignments
12 originate with a Mortgage Electronic Registration Systems ("MERS") agent. The first
13 assignment recorded January 19th 2010 purports to transfer interest in Ms. Miller's deed of
14 trust and note to Bank of New York Mellon as Trustee for Harborview Mortgage Loan Trust
15 2006 CB1. The second assignment recorded April 7th 2011 purports to transfer the same
16 interest to BAC Home Loan Servicing LP, a subsidiary of Bank of America.
17

18 5. My inspection of the recorded documents of title including the two conflicting
19 assignments of deed of trust leads me to conclude that the assignments are defective for
20 reasons described herein and do not evidence a transfer of beneficial interest in Ms. Miller's
21 deed of trust to either BAC Home Loans Servicing LP or Bank of New York Mellon as Trustee
22 for the Harborview Mortgage Loan Trust 2006 CB-1.
23

24 6. Because of my experience in analysis of securitized mortgage loan trusts, I must conclude
25 that the second assignment to BAC Home Loans Servicing LP describes an impossible act.

Regardless of who the principal is that MERS acted as agent for, BAC Home Loans Servicing

DECLARATION OF COLIN DAVIS

1 LP is well known to be a servicing arm of Bank of America and is not a purchaser of mortgage
2 loans. BAC forwards mortgagor payments to mortgage investment entities, most commonly
3 securitized mortgage backed securities trusts. And because of the existence of the prior
4 assignment to a securitized trust, for which Bank of New York Mellon is a trustee, I do not find
5 the second assignment to be credible. Additionally, MERS itself lists Bank of New York
6 Mellon as the “Investor” of Ms. Miller’s loan on its website.
7

8 7. This second, and in my opinion faulty, assignment of deed of trust to BAC Home Loans
9 Servicing LP is also the basis of recorded interest in Ms. Miller’s loan which a substitution of
10 trustee to Recontrust, the foreclosing trustee depends. As outlined in my analysis of the
11 substitution of trustee, below, this substitution is likely invalid rendering Recontrust, without
12 title.
13

14 8. In regards to the first assignment to Bank of New York Mellon, I note that the language
15 describes how Mortgage Electronic Registration Systems (“MERS”), “...grants, assigns and
16 transfers to Bank of New York Mellon...as trustee for Harborview Mortgage Loan Trust 2006
17 CB-1...all beneficial interest under that certain deed of trust dated 12/13/2005... together with
18 the note or note(s) therein described...”, and that this action is executed on September 8th 2009.
19 My familiarity with securitized mortgage loan trusts allows me to recognize immediately that
20 this language describes an impossible action which cannot be arranged for at the date of
21 execution and which I will describe in full in this declaration.
22

23 9. My analysis concludes that the Harborview 2006 CB-1 trust and Bank of New York
24 Mellon, who acts as its trustee, has not obtained any interest by way of the assignment of deed
25 of trust because the relevant promissory note must have been transferred to the trust before or
within 30 days after February 28, 2006, the trust’s closing date, by the Depositor, a party other

DECLARATION OF COLIN DAVIS

1 than MERS, and that any contributions to the trust after such a date were impossible under the
2 trust's indentures and under the Internal Revenue Code. Therefore, it will not be possible to
3 ascertain whether or not Bank of New York Mellon obtained interest in Ms. Miller's loan by
4 inspection of the assignment of deed of trust alone.
5

6
7 **Analysis:**

8 10. My analysis within this declaration mostly excludes the above mentioned second
9 assignment of deed of trust to BAC Home Loans Servicing LP for the reasons described and
10 because I searched the MERS online Servicer ID database located at 13 Loans Servicing LP is listed as the "Servicer". This inconsistency combined with my
14 knowledge that BAC Home Loans Servicing LP is not a buyer of mortgage notes causes me to
15 exclude the second assignment completely. I therefore examine the details of the first
16 assignment to Bank of New York Mellon in the paragraphs below and disregard the second
17 assignment. It is either a mistake or more likely an attempt to misconstrue the facts, a common
18 practice in today's foreclosure climate.
19

20 11. In regards to the first assignment, I note that Defendant, Bank of New York Mellon is the
21 trustee for the Harborview Mortgage Loan Trust 2006 CB-1, which is a Real Estate Mortgage
22 Investment Conduit ("REMIC"), as defined under section 860 A through G of the Internal
23 Revenue Code. The REMIC is also known as a "securitized" mortgage backed securities trust
24 which is required to submit a number of its governing indentures, documents and tax related
25 filings to the Securities and Exchange Commission ("SEC").

DECLARATION OF COLIN DAVIS

1 12. The Harborview Mortgage Loan Trust 2006 CB-1 trust is populated with assets
2 transferred to it by a succession of operations by several parties and overseen by Bank of New
3 York Mellon as its trustee. Like all REMIC trustees, it contracts with several parties to
4 facilitate the transfer of assets into the trust to help maintain its bankruptcy remote status, and
5 to transfer payments from homeowners to investors.
6

7 13. Because of the language used in the assignment of deed of trust which refers to transfer
8 of interest in the note and deed of trust, my analysis of the Harborview trust's founding
9 documents focused on the transfer of "Mortgage Loans" from origination on to final
10 acquisition by the REMIC trust overseen by Bank of New York Mellon. Please note that
11 "Mortgage Loans", as defined in the Harborview trust's founding documents, consist of
12 packages of homeowner's promissory notes and the mortgages or deeds of trust that secure
13 them with other associated documents.
14

15 14. I have examined the following documents which relate to the Harborview Mortgage Loan
16 Trust 2006 CB-1 located on the online SEC EDGAR database: The Pooling Agreement (also
17 commonly referred to as a Pooling and Servicing Agreement or "PSA" located at
18 <http://www.secinfo.com/d13f21.v8x.d.htm>), the Free Writing Prospectus (located at
19 <http://www.secinfo.com/d13f21.v7q.htm>), the 424 B5 Prospectus Supplement (located at
20 <http://www.secinfo.com/d12TC3.v89t.htm>), the Mortgage Loan Purchase Agreement (located
21 at <http://www.secinfo.com/d13f21.v8x.c.htm>), the Mortgage Loan Purchasing and Servicing
22 Agreement (located at <http://www.secinfo.com/d13f21.v8x.c.htm>) and the Assignment and
23 Recognition Agreement (located at <http://www.secinfo.com/d13f21.v8x.a.htm>) which have
24 been registered with the Securities and Exchange Commission EDGAR database in relation to
25

DECLARATION OF COLIN DAVIS

1 this entity. These documents are collectively catalogued online at

2 [http://www.secinfo.com/\\$/SEC/Registrant.asp?CIK=1354294](http://www.secinfo.com/$/SEC/Registrant.asp?CIK=1354294)

3 15. I have also examined the recorded deed of trust, assignment of deed of trust, notice of
4 default, notice of trustee sale, and substitution of trustee. My familiarity with REMIC trust
5 indentures allows me to locate and isolate sections of the documentation which are relevant to
6 Ms. Miller's case. The Pooling Agreement is the central governing document and is an
7 indenture of the Harborview trust. The other registered documents are also controlling and/or
8 directly related to the Pooling Agreement. As with all trusts, the trustee of the Harborview
9 Mortgage Loan Trust 2006 CB-1 trust is strictly limited to the representations and warranties
10 expressed in its indentures.
11

12 16. As described in the Pooling Agreement and the other above-listed documents, the
13 following parties are involved in the origination and transfer of Ms. Miller's loan into the
14 Harborview securitized trust: **Countrywide Home Loans** as Originator of the loan portfolio,
15 **Greenwich Capital Financial Products Inc.** as Seller of the Mortgage Loans, **Greenwich**
16 **Capital Acceptance Inc.** as Depositor of the assets, and **Bank of New York** as trustee for the
17 **Harborview Mortgage Loan Trust 2006 CB-1** and Defendant in this case. Bank of New
18 York also acts as the custodian of all the necessary documentation and loan files.
19

20 17. The original payee of Ms. Miller's loan and note, Stearns Lending Inc, who is not directly
21 named in the trust's governing documents, worked directly with the Originator, Countrywide,
22 to provide it with loans to be securitized. Ms. Miller's original deed of trust, promissory note
23 and other closing documents made no mention of any of these parties; she was completely
24 unaware of the fate of her mortgage loan and of the parties involved even though Stearns
25 Lending Inc. must have known in advance that its loans were to be securitized.

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Order of operations:

Note Payee → Securitization Originator → Seller → Depositor → Trust /Trustee.

18. During my analysis, I located the specific language in the Harborview trust’s founding documents which describe the mandatory process for transfers of right, title and interest in the Mortgage Loans into the trust. I needed to compare the trust’s mandatory rules for transfer and acceptance of mortgage notes as compared to the assignment of deed of trust which has been recorded in the public record.

Transfer of interest according to the founding documents:

19. Among other sections, sections 2.01 – 2.09 of Article II of the Pooling Agreement, an indenture of the Harborview trust, titled “Conveyance of Mortgage Loans” clearly contemplate the operations concerning transfer of right, title and interest in the Mortgage Loans from the Seller of the loans, to the Depositor and then to the Trustee of the trust. In section 2:01 the Depositor, who is the owner and final seller of the Mortgage Loans to the Harborview trust, represents that:

“The Depositor, concurrently with the execution and delivery hereof, does hereby transfer, assign, set over and otherwise convey to the Trustee without recourse for the benefit of the Certificateholders all the right, title and interest of the Depositor, including any security interest therein for the benefit of the Depositor, in and to (a) each Mortgage Loan...”

20. Greenwich Capital Acceptance Inc., as Depositor, clearly warrants in section 2.06 of the Pooling Agreement that it has acquired good title in the Mortgage Loans and has acquired its interest (by the Closing Date of February 28, 2006) to be transferred to the trust:

DECLARATION OF COLIN DAVIS

1 *“The Depositor represents and warrants to the Trustee on behalf of the*
2 *Certificateholders... [I]mmediately prior to the sale and assignment by the Depositor to*
3 *the Trustee on behalf of the Trust of each Mortgage Loan, the Depositor had good and*
4 *marketable title to each Mortgage Loan (insofar as such title was conveyed to it by the*
5 *Seller) subject to no prior lien, claim, participation interest, mortgage, security interest,*
6 *pledge, charge or other encumbrance or other interest of any nature;.”*

8 *And in section 2:06 (iii): “as of the Closing Date, the Depositor has transferred all right,*
9 *title and interest in the Mortgage Loans to the Trustee on behalf of the Trust”*

11 21. In Sections 2:01-2.09 as seen above and all throughout the hundreds of pages of
12 governing documents, the Closing Date is repeatedly referred to as the date by which mortgage
13 notes are to be conveyed, except in certain exceptions where the notes are to be transferred
14 within 30 days subsequent to the Closing Date.

16 22. It is clear that the founding documents contemplate a complete transfer of interest in the
17 Mortgage Loans, which include the notes, to be contributed to the trust by the Closing Date of
18 February 28, 2006. For the trust to issue its certificates and to start its operations, it must
19 acquire all right, title and interest in the mortgages and notes on or around the Closing Date of
20 February 28, 2006. **This is in complete contradiction to the language and dates used in the**
21 **assignment of deed of trust.**

23 **The First Assignment of Deed of Trust**

24 23. I have reviewed the first assignment of deed of trust which was recorded in the Clark
25 County recorder’s office as Instrument No. 201001190001950. This assignment was executed

DECLARATION OF COLIN DAVIS

1 by Angela Nava as Assistant Secretary of Mortgage Electronic Registration Systems on
2 September 8th, 2009.

3 24. The assignment was then notarized in Tarrant County Texas by Connie L. Briscoe on
4 November 30th, 2009. I can only speculate as to why the execution and notarization dates do
5 not comport and I would be interested in viewing the original document to compare more
6 details
7

8 25. As I also described in the Introduction and Overview, this assignment states that it
9 "...grants, assigns and transfers to Bank of New York Mellon...as trustee for Harborview
10 Mortgage Loan Trust 2006 CB-1...all beneficial interest under that certain deed of trust dated
11 12/13/2005... together with the note or note(s) therein described...".

12 26. This is nearly the exact language used in the Harborview 2006 CB-1 trust's founding
13 documents, described above, which is reserved to the Depositor, Greenwich Capital
14 Acceptance Inc.. *and only to the Depositor. Only the Depositor may transfer the note to the*
15 *trust according to the founding documents and only on or around the Closing Date which is*
16 *February 28, 2006, four years prior to the recorded assignment.*

17
18 27. Language in the indentures pertaining to assignments and transfers consistently relates to
19 the trust's Closing Date. In fact, I have found no language in these particular documents, or in
20 any other REMIC documents that I have studied, where an assignment such as the instant
21 assignment of deed of trust and note to Bank of New York Mellon, is permissible at a date
22 significantly after the Closing Date. Considering that the IRS REMIC provisions at U.S.C.
23 Title 26 860 G (3) dictate that permitted contributions called "Qualified Mortgages" will be
24 within 90 days of a REMIC's startup date, I understand this to be a primary reason why
25 assignments to the trust will not be at a later date. Additionally, the trust indentures warrant

DECLARATION OF COLIN DAVIS

1 that only performing loans will be contributed to the trust. *Besides being a restricted action,*
2 *it makes no common sense that Bank of New York Mellon would buy a non-performing note*
3 *at the time the assignment was executed.*

4 28. It is concerning that the assignment of deed of trust states that it not only transfers interest
5 in the deed of trust, but that for consideration, it acts to transfer the note as well. *Again, there*
6 *is no language in any of the Harborview Mortgage Loan trust 2006 CB-1's founding*
7 *documents where any party other than the Depositor, Greenwich Capital Acceptance Inc.,*
8 *is given permission to transfer mortgage notes to Bank of New York as Trustee at any time*
9 *or under any circumstances.*

10 29. It is worth pointing out again that Ms. Miller's loan was to be transferred to multiple
11 parties - from the payee to the Originator, to the Seller, to the Depositor and finally to Bank of
12 New York as trustee for the trust. This means that in order for Bank of New York to have
13 gained legal title and interest in Ms. Miller's mortgage note, four complete transfers of the
14 promissory note must have been made, all according to Nevada state law, according to the trust
15 indentures, and subject to New York law as well, where this trust was founded. *The single*
16 *recorded assignment of deed of trust, which purports to transfer the note, (presumably from*
17 *the original lender) directly to the Harborview 2006 CB-1 trust is a clear violation of the*
18 *trust's representations and warranties, and other law.*

21 The Second Assignment of Deed of Trust

22 30. As I outlined in the Introduction and Overview, I must conclude that the second
23 assignment to BAC Home Loans Servicing LP is invalid and that it was executed and recorded
24 for reasons I can only speculate about. BAC does not purchase mortgage loans, they are a
25 servicer as their name implies, and a MERS online search reveals a listing of Bank of New

1 York as “Investor” and BAC as “Servicer”. The MERS search listing has no evidentiary
2 substance as to who the real party in interest is, because a failure of Bank of New York to
3 follow its indentures and other law would render it without interest, but this information does
4 fly in the face of the statements alleged to be true and correct in both of the assignments of
5 deed of trust. I must note that the MERS online database is not a reliable reference for
6 determining actual mortgagee interest. It is maintained by the lenders themselves but it is useful
7 for circumstantial information.
8

9 Substitution of Trustee

10 **31.** The party who executed the substitution of trustee appears to be Laura Dalley as
11 Assistant Secretary of BAC Home Loans Servicing LP and the document is dated April 6th,
12 2011. As I described above, BAC Home Loans Servicing LP could not have acquired any
13 interest because the assignment to them was invalid and they would not therefore have any
14 power to substitute the trustee. Unless Recontrust, the new trustee was appointed authority to
15 conduct foreclosure from the *actual beneficiary*, it is clearly acting without authority.
16
17

18 Mortgage Electronic Registrations Systems (“MERS”)

19 **32.** Mortgage Electronic Registrations Systems or “MERS” was listed in Ms. Miller’s deed
20 of trust as the “Nominee for Lender and Lender’s successors and assigns”. It is also called
21 “beneficiary of record” in the deed of trust.
22

23 **33.** “MERS is a national, electronic system created in 1993 and tracks the beneficial
24 ownership and servicing rights in mortgage loans. Members register and agree to appoint
25 MERS to act as their agent, or nominee, and that MERS will be the lien holder of record, as
nominee for the beneficial owner.” See *In re Mitchell*, No. 07-16336-LBR, 2009 WL 1044368,

1 *1-2 (Bankr. D. Nev. March 31, 2009). Transfers of ownership of mortgage loans by members
2 of MERS to other members are tracked by the electronic system. In this way, MERS permits
3 beneficial ownership of mortgage loans to be transferred fluidly and with minimal
4 administrative burden. This efficient transfer of beneficial ownership has greatly contributed to
5 the ability of banks and other institutional investors to securitize and trade mortgage loans as
6 investments.
7

8 34. But a large number of courts around the country have concluded that the MERS system is
9 defective and does not act to transfer title to the mortgages by the method it employs. A partial
10 list of judicial opinions on this matter is here:

11 http://www.chinkinthearmor.net/Important_Court_Cases.html

12 35. New York bankruptcy Judge Grossman sums up the conclusions of this researcher:

13 **"MERS did not have authority, as 'nominee' or agent, to assign the mortgage absent a**
14 **showing that it was given specific written directions by its principal."** See In re Agard,
15 Case No. 810-77338-reg, US Bc'y Ct, E.D.N.Y. (2011)

16
17 36. The Harborview Mortgage Loan Trust 2006 CB-1's founding documents contemplate
18 that MERS related loans would be exempt from some recordation requirements of traditional
19 mortgage liens. This is because MERS was designed to enable assignors and assignees of
20 mortgages to forego written execution of assignments and their recording in the county
21 recorder's offices, substituting a very old practice for private electronic recordation. What this
22 means for securitized loans, in the logic that MERS follows, is that each transfer of the
23 mortgage and note to the Originator, Seller, Depositor and finally to the trustee of the
24 securitized trust would not necessitate a corresponding recordation of assignment in the county
25 recorder's offices if the MERS system is used. **But regardless of the highly disputed legality**

DECLARATION OF COLIN DAVIS

1 **of this method, the security of a MERS related mortgage lien is only held by MERS**
2 **member entities that are registered with the MERS system and have submitted the**
3 **requisite legal documents.**

4 37. I have searched the MERS online directory for MERS members and found that *out of the*
5 *five entities that should have at some point held the mortgage note, two of the five are not*
6 *MERS members!* Greenwich Capital Financial Products Inc. as Seller of the Mortgage Loans
7 and Greenwich Capital Acceptance Inc. as Depositor of the assets are not MERS members
8 according to the MERS online database located at:

9
10 <https://www.mersonline.org/mers/mbrsearch/validatembrsearch.jsp> .

11 **38. The entire “MERS as nominee” operation is hinged on the requirement that**
12 **companies acting on behalf of the lender or assignee be MERS members. MERS was**
13 **given nominee or agency powers in Ms. Miller’s deed of trust, but it cannot assign any**
14 **interest to or from parties who are not within its authority to act as agent or nominee.**

15
16 39. Finally, the MERS system itself may be on its way to becoming obsolete as state courts
17 around the country are determining that its operations are unlawful. Also, there is no warranty
18 in the founding documents of the Harborview 2006 CB-1 trust concerning the use of MERS as
19 a legally permissible system which comports with state laws. Out of hundreds of pages within
20 the founding documents for the trust, and the mortgage contracts themselves, there is no
21 description whatsoever of how promissory notes will be secured by mortgages using the MERS
22 system. Outside of a mere mention, language describing the operations of MERS is
23 mysteriously absent.
24

25 **Governing Law**

40. Section 12:04 of the Pooling Agreement states that:

DECLARATION OF COLIN DAVIS

1 SECTION 12.04. Governing Law; Jurisdiction.

2 THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED **IN ACCORDANCE**
3 **WITH THE LAWS OF THE STATE OF NEW YORK**, WITHOUT REFERENCE TO ITS
4 CONFLICT OF LAW PROVISIONS (OTHER THAN SECTION 5-1401 OF THE GENERAL
5 OBLIGATIONS LAW), AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE
6 PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH
7 LAWS.

8 41. It is my understanding of trust law that if the parties who created and operated the
9 Harborview Mortgage Loan Trust 2006 CB-1 trust breached their indentures to acquire any
10 Mortgage Loans, those contributions would be void under New York law. New York Trust
11 law dictates that a trustee's actions outside the terms of the indentures are void. See Dye v.
12 Lewis, 326 N.Y.S.2d 581, 68 Misc.2d 434 (N.Y.Sup., 1971), (The authority of a trustee to
13 whom a mortgage had been delivered under a trust indenture was subject to any limitations
14 imposed by the trust instrument, and every act in contravention of the trust was void.);
15 Warren's Weed New York Real Property 14-140 § 140.58 ("It is a fundamental principle of
16 trust law that the instrument under which the trustee acts is the charter of his rights. Therefore,
17 in administering the trust, he must act in accordance with its terms. This rule applies to every
18 kind of trustee, regardless of whether the trustee is to hold, invest or pay over income, or to sell
19 or liquidate for the benefit of creditors.").

20 42. It is my understanding that the transfer of negotiable mortgage notes to or from a REMIC
21 trust is governed under the Uniform Commercial Code ("U.C.C.") Article 3 as adopted by the
22 several states, a REMIC trust's indentures, and the laws of the state that the trust was founded
23 in. It is my understanding that mortgages and deeds of trust to or from a real estate trust are
24 governed under the laws of the state the property is located in, the mortgage contracts
25 themselves, and the indentures of the trust.

DECLARATION OF COLIN DAVIS

1 CONCLUSION

2 43. It is my opinion that:

3 - The first assignment of deed of trust to Bank of New York Mellon as trustee and the language
4 contained therein does not comport with the representations and warranties in the Harborview
5 2006 CB-1 trust's indentures and related governing documents as the assignment is significantly
6 after the trust's closing date and it was not executed by the Depositor.
7

8 - Greenwich Capital Financial Products Inc. as Seller of the Mortgage Loans and Greenwich
9 Capital Acceptance Inc. as Depositor of the Mortgage Loans are not MERS members rendering
10 any transfer of interest by them through the MERS system impossible.

11 - The second assignment of deed of trust to BAC Home Loans Servicing LP is a complete
12 impossibility as BAC is a servicer and not a purchaser of loans for securitization. It is also in
13 complete contradiction to the prior assignment to Bank of New York and a MERS online MIN
14 search.
15

16 - The substitution of trustee which grants Recontrust powers to collect or foreclose on Ms.
17 Miller's loan is without authority because it was executed by an employee of BAC Home Loans
18 Servicing LP who has no interest in Ms. Miller's deed of trust or promissory note by assignment
19 or otherwise.

20 - The first assignment of deed of trust to Bank of New York Mellon as Trustee appears to be
21 evidence of one of two possibilities. Either its an attempt to convey an unqualified contribution
22 to the Harborview trust, breaking the terms of its indentures, New York trust law, and IRS code
23 governing REMIC's, which would deem Bank of New York without interest, or it's an attempt
24 to make onlookers believe that a typical and traditional foreclosure is taking place, when in fact
25 it is not.

DECLARATION OF COLIN DAVIS

Editorial

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3 44. The particular documentation used in this foreclosure proceeding and in millions of
4 others like it around the country is nonsensical when analyzed carefully. It is a result of the
5 construction of a new and previously untested mortgage origination and securitization market
6 designed in the 1990's and implemented from approximately years 2000 – 2008, before it
7 finally crashed and caused a worldwide economic disaster. The system was designed
8 haphazardly, without approval of any of the state's legislatures, and in contradiction to over
9 100 years of property law in the several states. The entities and individuals who have taken
10 advantage of a securitized mortgage ponzi scheme have been bailed out by U.S. taxpayers who
11 are now personally suffering from lost jobs, lowered real estate values, heavily deflated
12 retirement and pension funds, and paying increased commodity prices due to resulting inflation
13 while those who created this disaster are now attempting to collect on collateral secured by a
14 virtual thread and with nonsensical documentation. Homeowners are not looking for a "house
15 for free", they are merely pointing out that lenders and assignees are not telling the truth about
16 the situation. They are looking for some equitable remedy considering it was their sweat equity
17 which was the basis for the scheme and considering that they had no idea that their mortgages
18 would be used to build a dangerous ponzi scheme. Homeowners have asked for loan
19 modifications and principal reductions to account for the fallen market, but the "assignees"
20 have in nearly every case denied their requests, as it is more profitable to foreclose than
21 negotiate. It is this researcher's opinion that these parties should be held to the letter of the
22 law, just as they are attempting to hold homeowners to the letter of the contracts they signed.
23
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25

DECLARATION OF COLIN DAVIS

1 45. I declare under penalty of perjury under the laws of the State of California the foregoing
2 is true and correct to the best of my knowledge.

3
4 Signed in Pacheco, California on July 5th, 2011

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6 _____
7 Colin Davis
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