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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CRUZ**

KIMBERLY COX,

Plaintiff,

vs.

RECONTRUST COMPANY, N.A.;
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.;
BANK OF NEW YORK MELLON FKA
THE BANK OF NEW YORK AS
TRUSTEE FOR THE BENEFIT OF THE
CERTIFICATEHOLDERS CWMBS, INC.
CHL MORTGAGE PASS-THROUGH
TRUST 2005-2 MORTGAGE PASS-
THROUGH CERTIFICATES, SERIES
2005-2; COUNTRYWIDE HOME
LOANS, INC.; BANK OF AMERICA
CORPORATION; all persons known or
unknown claiming any legal or equitable
right, title, estate, lien or interest in the
property described in this Complaint
adverse to COX's title or any cloud upon
COX's title thereto; and does 1-100
inclusive,

Defendants.

Case No. CV174201

Case Filed: 05/24/2012

PLAINTIFF KIMBERLY COX'S
OPPOSITION THE REQUEST FOR
JUDICIAL NOTICE IN SUPPORT OF
DEMURRER TO SECOND AMENDED
COMPLAINT BY RECONTRUST
COMPANY, N.A.; MORTGAGE
ELECTRONIC REGISTRATION SYSTEMS,
INC.; BANK OF NEW YORK MELLON FKA
THE BANK OF NEW YORK AS TRUSTEE
FOR THE BENEFIT OF THE
CERTIFICATEHOLDERS CWMBS, INC.
CHL MORTGAGE PASS-THROUGH TRUST
2005-2 MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2005-2;
COUNTRYWIDE HOME LOANS, INC.; and
BANK OF AMERICA CORPORATION;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S OPPOSITION

Date: 11/02/2012

Time: 8:30 a.m.

Dept: 4

1 Non-specified “[d]efendants have requested this honorable Court take judicial notice of
2 their purported “attached certified court records and public documents.” The documents
3 Defendants have claimed are “certified court records and public documents” are not sufficiently
4 specific as to which each is represented to be, the applicable authority and are not as Defendants
5 have characterized.

6 **PLAINTIFF’S OBJECTION AND OPPOSITION TO DEFENDANTS’ REQUEST FOR**
7 **JUDICIAL NOTICE IN SUPPORT OF ITS DEMURRER TO PLAINTIFF’S SECOND**
8 **AMENDED COMPLAINT**

9 Plaintiff KIMBERLY COX (Ms. “COX” or “Plaintiff”), by and through her attorney,
10 hereby objects to and opposes Defendants’ REQUEST FOR JUDICIAL NOTICE IN
11 SUPPORT OF DEMURRER TO SECOND AMENDED COMPLAINT BY RECONTRUST
12 COMPANY, N.A.; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.; BANK
13 OF NEW YORK MELLON FKA THE BANK OF NEW YORK AS TRUSTEE FOR THE
14 BENEFIT OF THE CERTIFICATEHOLDERS CWMB, INC. CHL MORTGAGE PASS-
15 THROUGH TRUST 2005-2 MORTGAGE PASS-THROUGH CERTIFICATES, SERIES
16 2005-2; COUNTRYWIDE HOME LOANS, INC.; and BANK OF AMERICA
17 CORPORATION (“RJN”); and submits this Memorandum of Points and Authorities in support
18 of Plaintiff’s Opposition as follows.

19 **MEMORANDUM OF POINTS AND AUTHORITIES**

20 **I. INTRODUCTION**

21 While RECON cites “Defendants...request that the Court take judicial notice...” Who
22 the “Defendants” are, is undefined.

23 On p.2:1-2 of its RJN, Defendants request the Court take judicial notice of the
24 “following attached certified court records and public documents...” There are no statues or
25 cases cited that specify the authority to take judicial notice of each document defined as
26 characterized. For these reasons alone, Defendant’s entire RJN fails on its face.

1 **II. ARGUMENT**

2 The second paragraph of RJN p.2:3-5 cites Evidence Code § 452(d) yet fails to provide
3 which Exhibit this statute allegedly applies to.

4 Likewise, the third paragraph of RJN p.2:6-13, Defendants have claimed [Cal.]
5 Evidence Code section 452(h) “...allows the Court to take judicial notice of “[f]acts and
6 propositions that are not reasonably subject to dispute and are capable of immediate and
7 accurate determination by resort to sources of reasonable accuracy.” Again, Defendants are
8 not specific as to which document(s) is authorized by this statute. This statute is contrary to
9 Defendant’s assertions, because the documents it generally requests taking judicial notice of,
10 are not “...official public records, duly recorded in the Official Record of San Diego County,
11 the contents and authenticity of which “cannot be reasonably controverted.” *Evans v.*
12 *California Trailer Court, Inc.* (1994) 28 Ca.App.4th 540, 549 (“[t]he court may take judicial
13 notice of recorded deeds”). Once again Defendants failed to state which specific Request for
14 Judicial Notice this statute and its citation allegedly applies to and none of these documents are
15 recorded deeds nor recorded in San Diego County.

16 Defendants misunderstand the inapposite case it cites and what “recorded in the Official
17 Records of San Diego County means.” None of these documents are “recorded” anywhere, let
18 alone in the Official Records of San Diego County as distinguished by *Evans Id.*

19 While the Evidence Code may allow the court to take judicial notice of “[f]acts and
20 propositions that are not reasonably subject to dispute...;” documents labeled as Exhibits A-E
21 relate to Plaintiff’s Bankruptcy which are irrelevant to this Defendants’ Demurrer; are not
22 recorded deeds (in San Diego County or anywhere else); and are subject to dispute. In fact,
23 there was a Notice of Appeal filed disputing these matters; which is conspicuously absent from
24 being mentioned in Defendant’s Request.

25 California courts have stated: “...[a] demurrer is simply not the appropriate procedure
26 for determining the truth of disputed facts, judicial notice of matters upon demurrer will be
27 **dispositive only in those instances where there is or cannot be a factual dispute concerning**
28

1 **that which is sought to be judicially noticed.**¹” (emphasis added). In other words, judicial
2 notice cannot be taken, where the facts are themselves in dispute (which they are) and a
3 demurrer cannot be used to resolve a dispute as to whether the acts took place or are even at
4 issue in the Complaint². This applies to all Requests for Judicial Notice Defendants have
5 made.

6 Defendant’s request for taking notice of Exhibit F is also fatally flawed as it is not a
7 recorded document; not a court record of any kind; is irrelevant; hearsay and controverted by
8 Defendant Recontrust Company, N.A.’s (“RECON”) previous and virtually identical RJNs in
9 support of its previous demurrers to Plaintiff’s initial and First Amended Complaint, with a
10 completely different document as the same exhibit and Request (see Exhibit F of RECON’s
11 Request for Judicial Notice on the Record filed on 06/18/2012). The authenticity and veracity
12 of these documents are questionable at best and certainly disputed.

13 RECON has provided insufficient information to support its Requests. Section 453(b)
14 of the Evidence Code states that a court shall take judicial notice only when the requesting
15 party “[f]urnishes the court with sufficient information to enable it to take judicial notice of the
16 matter. A court may deny a request for judicial notice made without support. *Willis v. State of*
17 *California* 22 Cal.App.4th 287, 291 (1994) [denying a request for judicial notice where the
18 request was made “without appending any information whatsoever”.]

19 Here, Defendants’ request includes no supporting documentation beyond a cursory
20 reference to Evidence Codes §§ 452(d) and (h); along with one inapposite case cite; provides
21 no indication as to the nature or scope of the judicial notice being requested; and provides no
22 legal justification for the Court to take judicial notice of these documents.

23 As in *Willis*, RECON’s request is so deficient in supporting information that it must be
24 denied. (See *Willis*, supra, 22 Cal.App.4th at 291)

27 _____
28 ¹ *Cruz v. County of Los Angeles* 173 Cal.App.3d 1131, 1134 (1985)


² *Ibid.*

1 **III. CONCLUSION**

2 Defendants offer no viable support for its requests; cites one inapposite case in its
3 general statement; improperly attempts to turn a demurrer into a summary adjudication of
4 triable factual issues; and has failed to cite which statute any documents it seeks judicial notice
5 of, applies to.

6 Evidence Code Section 450 states “Judicial notice may not be taken of any matter unless
7 authorized or required by law.” None of these matters are required by law to be taken judicial
8 notice of and Defendants’ requests are unauthorized as made. Defendants’ RJN must be
9 dismissed.

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11 Dated: October 17, 2012

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13 Ronald H. Freshman
14 Attorney for Kimberly Cox