

1 Ronald H. Freshman, Esq., SBN#225136
2 Law Offices of Ronald H. Freshman
3 45050 Casas de Mariposa
4 Indian Wells, CA 92210
5 Telephone 858-756-8288
6 Facsimile 206-424-0744

7 Attorney for Kimberly Cox

FILED
NOV 13 2012
ALEX CALVO, CLERK
BY FLORENCE PATTEN
DEPUTY, SANTA CRUZ COUNTY

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

10 KIMBERLY COX,

11 Plaintiff,

12 vs.

13 RECONTRUST COMPANY, N.A.;
14 MORTGAGE ELECTRONIC
15 REGISTRATION SYSTEMS, INC.;
16 BANK OF NEW YORK MELLON FKA
17 THE BANK OF NEW YORK AS
18 TRUSTEE FOR THE BENEFIT OF THE
19 CERTIFICATEHOLDERS CWMBS, INC.
20 CHL MORTGAGE PASS-THROUGH
21 TRUST 2005-2 MORTGAGE PASS-
22 THROUGH CERTIFICATES, SERIES
23 2005-2; COUNTRYWIDE HOME
24 LOANS, INC.; BANK OF AMERICA
25 CORPORATION; all persons known or
26 unknown claiming any legal or equitable
27 right, title, estate, lien or interest in the
28 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

ORDER DENYING DEFENDANTS'
DEMURRER TO PLAINTIFF'S SECOND
AMENDED COMPLAINT

1 On November, 2012 DEFENDANTS RECONTRUST COMPANY, N.A.;

2 MORTGAGE ELECTRONIC REGISTRATIONS SYSTEMS, INC.; BANK OF NEW YORK

3 MELLON FKA THE BANK OF NEW YORK AS TRUSTEE FOR THE BENEFIT OF THE

4 CERTIFICATEHOLDERS CWMBS, INC. CHL MORTGAGE PASS-THROUGH TRUST

5 2005-2 MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-2;

6 COUNTRYWIDE HOME LOANS, INC.; and BANK OF AMERICA CORPORATION'S

7 ("Defendants") DEMURRER TO PLAINTIFF'S SECOND AMENDED COMPLAINT

8 ("Demurrer") came before the Honorable Timothy R. Volkmann in Department 4 of the

9 Superior Court of the State of California, County of Santa Cruz and was heard. Having

10 reviewed the pleadings, papers, records on file, oral argument submitted and GOOD CAUSE

11 APPEARING; IT IS HEREBY ORDERED that Defendants' Demurrers to Plaintiff's

12 Complaint are each OVERRULED and the Demurrer is DENIED in its entirety.

13 IT IS FURTHER ORDERED THAT Defendants shall file and serve an answer to

14 Plaintiff's Complaint on or before December 3, 2012; a further Case Management Conference

15 is scheduled to be heard on February 7, 2013 at 8:30 am in Department 4 of the above

16 mentioned Court; and Case Management Statements are due to be served and filed on or before

17 January 28, 2013.

18

19 IT IS SO ORDERED:

20

21 Date: NOV 13 2012

By: TIMOTHY R. VOLKMANN
Judge of the Superior Court
for the County of Santa Cruz
The Honorable Timothy R. Volkmann

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Ronald H. Freshman SBN #225136 Law Offices of Ronald H. Freshman 45050 Casas de Mariposa Indian Wells, CA 92210 TELEPHONE NO.: (858) 756-8288 FAX NO. (Optional): (206) 424-0744 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Kimberly Cox	FOR COURT USE ONLY <div style="font-size: 2em; font-weight: bold; letter-spacing: 0.5em;">FILED</div> NOV 09 2012 ALEX GALVO, CLERK BY FLORENCE PATTEN DEPUTY, SANTA CRUZ COUNTY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Cruz STREET ADDRESS: 701 Ocean St. MAILING ADDRESS: 701 Ocean St. CITY AND ZIP CODE: Santa Cruz 95060 BRANCH NAME:	CASE NUMBER: CV174201
PLAINTIFF/PETITIONER: KIMBERLY COX DEFENDANT/RESPONDENT: RECONTRUST COMPANY, N.A. et al	JUDGE: Hon. Timothy R. Volkmann DEPT.: 4
PROOF OF SERVICE—CIVIL Check method of service (only one): <input type="checkbox"/> By Personal Service <input type="checkbox"/> By Mail <input checked="" type="checkbox"/> By Overnight Delivery <input type="checkbox"/> By Messenger Service <input type="checkbox"/> By Fax <input type="checkbox"/> By Electronic Service	

FILED BY FACSIMILE

(Do not use this proof of service to show service of a Summons and complaint.)

1. At the time of service I was over 18 years of age and not a party to this action.
2. My residence or business address is:
322 West Center Street
Yreka, CA 96097
3. The fax number or electronic service address from which I served the documents is (complete if service was by fax or electronic service):
4. On (date): 11/03/2012 I served the following documents (specify):
[Proposed] ORDER DENYING DEMURRER
- The documents are listed in the Attachment to Proof of Service—Civil (Documents Served) (form POS-040(D)).
5. I served the documents on the person or persons below, as follows:
 - a. Name of person served: See Attachment
 - b. (Complete if service was by personal service, mail, overnight delivery, or messenger service.)
Business or residential address where person was served:
See Attachment - Persons Served
 - c. (Complete if service was by fax or electronic service.)
(1) Fax number or electronic service address where person was served:
 - (2) Time of service:
6. The documents were served by the following means (specify): United States Postal Service Express Mail
 - a. By personal service. I personally delivered the documents to the persons at the addresses listed in item 5. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office, between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening.

CASE NAME Cox v. ReconTrust, N.A. et al	CASE NUMBER: CV174201
--	--------------------------

6. b. **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses in item 5 and *(specify one)*:
- (1) deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
 - (2) placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
- I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at *(city and state)*: Medford, OR
- c. **By overnight delivery.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses in item 5. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
- d. **By messenger service.** I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed in item 5 and providing them to a professional messenger service for service. *(A declaration by the messenger must accompany this Proof of Service or be contained in the Declaration of Messenger below.)*
- e. **By fax transmission.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed in item 5. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.
- f. **By electronic service.** Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed in item 5.

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

Date: 11/03/2012

Charles Wayne Cox
(TYPE OR PRINT NAME OF DECLARANT)


(SIGNATURE OF DECLARANT)

(If item 6d above is checked, the declaration below must be completed or a separate declaration from a messenger must be attached.)

DECLARATION OF MESSENGER

- By personal service.** I personally delivered the envelope or package received from the declarant above to the persons at the addresses listed in item 5. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package, which was clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office, between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening.

At the time of service, I was over 18 years of age. I am not a party to the above-referenced legal proceeding.

I served the envelope or package, as stated above, on *(date)*:

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

Date:

(NAME OF DECLARANT)



(SIGNATURE OF DECLARANT)

SHORT TITLE: Cox v. ReconTrust Company, N.A. et al	CASE NUMBER: CV174201
--	---------------------------------

Attachment to Proof of Service by First-Class Mail--Civil (Persons Served) (This Attachment is for form POS-040)

THE NAMES OF ALL PARTIES TO THE ACTION ARE AS FOLLOWS:

KIMBERLY COX;

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,

NAME AND ADDRESS OF EACH PERSON SERVED:

Name of Person Served	Address (number, street, city and zip)
RECONTRUST COMPANY, N.A.	C/O Severson & Werson Attn: David E. Pinch One Embarcadero Center, Suite 2600 San Francisco, CA 94111
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.	C/O Severson & Werson Attn: David E. Pinch One Embarcadero Center, Suite 2600 San Francisco, CA 94111
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.	C/O Severson & Werson Attn: David E. Pinch One Embarcadero Center, Suite 2600 San Francisco, CA 94111
COUNTRYWIDE HOME LOANS, INC.	C/O Severson & Werson Attn: David E. Pinch One Embarcadero Center, Suite 2600 San Francisco, CA 94111
BANK OF AMERICA CORPORATION	C/O Severson & Werson Attn: David E. Pinch One Embarcadero Center, Suite 2600 San Francisco, CA 94111