

1 (3) ENJOINS George from recording any further documents
2 against the title of the Bonita Property and from any
3 further unauthorized use of Fannie Mae's name.

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5 **I. BACKGROUND**

6 **A. Factual Background¹**

7 In November 2003, the Bonita Property was owned by
8 Mario R. George and Divina A. George. (Exh. A to RJN.)
9 In 2005, Mario and Divina George refinanced the Bonita
10 Property with a loan from GMAC Mortgage Corporation
11 ("GMAC"), which was secured by a deed of trust ("GMAC
12 DOT") recorded on February 22, 2005. (Exh. B to RJN.)
13 Executive Trustee Services ("ETS") was named trustee of
14 the GMAC DOT. (Id.)

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16 In July 2010, Mario and Divina George defaulted on
17 their loan from GMAC and were served with a Notice of
18 Default and Election to Sell. (Complaint (Doc. No. 1) ¶

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20 ¹ Along with this Motion, Fannie Mae filed a Request
21 for Judicial Notice ("RJN"). (Doc. No. 14.) The Court
22 takes judicial notice of Exh. 1-11 to the RJN as Fannie
23 Mae has provided a reference number for each document,
24 showing that they were in fact recorded in the Official
25 Records of San Bernardino County; this demonstrates that
26 the documents are public records. Exh. 12 to the RJN is
27 an order of this Court, which is always subject to
28 judicial notice.

1 9; Compl. Exh. A.) On August 8, 2011, the Bonita
2 Property was sold at a foreclosure sale to GMAC. (Id.)
3 On August 10, 2011, GMAC took title to the Bonita
4 Property, by way of a Trustee's Deed Upon Sale, which
5 GMAC promptly recorded. (Id.)
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7 On August 25, 2011, GMAC conveyed the Bonita Property
8 to Fannie Mae by way of a Corporation Grant Deed.
9 (Compl. ¶ 10; Compl. Exh. B.) On October 13, 2011,
10 Fannie Mae recorded the Corporation Grant Deed. (Id.)
11

12 On June 15, 2010, before the foreclosure sale,
13 George recorded a document titled "Revocation of Power of
14 Attorney" that purported to remove ETS as trustee of the
15 GMAC DOT. (Compl. ¶ 11; Compl. Exh. C.) At the same
16 time, George recorded a document titled "Revocation of
17 Deed" purporting to revoke the GMAC DOT. (Compl. ¶ 12;
18 Compl. Exh. D.) George did not have authority to record
19 either document. (Compl. ¶¶ 14-15.)
20

21 On August 30, 2011, after Fannie Mae acquired title
22 to the Bonita Property, George and David Alan Boucher
23 ("Boucher") recorded a deed ("Grant Deed") purportedly
24 transferring the Bonita Property from GMAC to George.
25 (Compl. ¶ 14; Compl. Exh. E.) The Grant Deed was signed
26 by Boucher as an "authorized representative" of GMAC;
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1 however, Boucher was not an employee, officer, or
2 authorized signatory of GMAC and had no authority to
3 execute or record the Grant Deed. (Compl. ¶ 15.)
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5 **B. Procedural Background**

6 On May 1, 2013, in Federal National Mortgage
7 Association v. Divina Abselete George et.al., No.
8 EDCV12-0477-VAP, this Court entered an order granting
9 Fannie Mae's Motion for Entry of Default Judgment Setting
10 Aside Fraudulent Conveyances and Issuance of Permanent
11 Injunction ("Order") (Doc. No. 95.) The Order quieted
12 title to six Fannie Mae properties (including the Bonita
13 Property), canceled instruments recorded by Boucher for
14 fraudulently executing grant deeds, awarded damages with
15 respect to costs for clearing title, and enjoined Boucher
16 from recording any further documents against the title of
17 the six properties and from any further unauthorized use
18 of Fannie Mae's name. (Order at 2.)
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20 George was a defendant in this prior action, but was
21 dismissed, without prejudice, because Fannie Mae did not
22 serve her within the time frame provided by the Federal
23 Rules of Civil Procedure. (Order at 4.)
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1 On August 14, 2014, Fannie Mae filed the instant
2 Complaint against George. The Complaint alleged four
3 claims: (1) cancellation of instruments; (2) quiet title;
4 (3) damages for slander of title; and (4) injunctive
5 relief. (Compl. ¶¶ 7-34.)
6

7 On February 12, 2015, Fannie Mae requested the Clerk
8 of Court enter default against George for failing to
9 respond to the Complaint. (Doc. No. 11.) On February
10 19, 2015, the Clerk entered default; Fannie Mae submitted
11 this Motion on March 4, 2015. (Doc. No. 12.)
12

13 **C. Request for Judicial Notice**

14 Fannie Mae filed a Request for Judicial Notice along
15 with its Motion, requesting judicial notice of the
16 following twelve documents:

17 (1) A Grant Deed recorded on November 5, 2003 as
18 Instrument No. 2003-0834487 in the Official Records of
19 San Bernardino County;

20 (2) A Deed of Trust recorded on February 22, 2005 in
21 the Official Records of San Bernardino County, as
22 document number 2005-012287;

23 (3) An Assignment of Deed of Trust recorded on July
24 19, 2010 in the Official Records of San Bernardino County
25 as document number 2010-0287335;
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1 (4) A Substitution of Trustee recorded on July 19,
2 2010 in the Official Records of San Bernardino County, as
3 document number 2010-0287336;

4 (5) A Notice of Default and Election to Sell Under
5 Deed of Trust recorded on July 19, 2010 in the Official
6 Records of San Bernardino County, as document number
7 2010-0287337;

8 (6) A Revocation of Power of Attorney recorded on
9 June 15, 2010 in the Official Records of San Bernardino
10 County, as document number 2010-0236728;

11 (7) A Revocation of Deed recorded on June 15, 2010 in
12 the Official Records of San Bernardino County, as
13 document number 2010-0236729;

14 (8) A Notice of Trustee's Sale recorded on October
15 28, 2010 in the Official Records of San Bernardino
16 County, as document number 2010-0448216;

17 (9) A Trustee's Deed Upon Sale recorded on August 10,
18 2011 in the Official Records of San Bernardino County, as
19 document number 2011-0336912;

20 (10) A Grant Deed recorded on August 30, 2011, as
21 Instrument No. 2011-0365288, in the Official Records of
22 San Bernardino County;

23 (11) A Corporation Grant Deed recorded on October 13,
24 2011, as Instrument No. 2011-0428440, in the Official
25 Records of San Bernardino County; and

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1 (12) A Judgment Canceling Instruments and Quieting
2 Title entered on May 1, 2013 in the United States
3 District Court Central District of California
4 Court Case Number EDCV 12-00477 VAP, which was then
5 recorded as Instrument No. 2013-0279727 in the Official
6 Records of San Bernardino County.

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8 A court may take judicial notice of court filings and
9 other matters of public record. See Reyn's Pasta Bella,
10 LLC v. Visa USA, Inc., 442 F.3d 741, 746 n.6 (9th Cir.
11 2006) (citing Burbank-Glendale-Pasadena Airport Auth. v.
12 City of Burbank, 136 F.3d 1360, 1364 (9th Cir. 1998)).
13 Fannie Mae has provided a reference number for Exhibits
14 1-11, showing that they were in fact recorded; this
15 demonstrates that the documents are public records. See
16 Grant v. Aurora Loan Servs., Inc., 736 F. Supp. 2d 1257,
17 1264 (C.D. Cal. 2010); Velazquez v. GMAC Mortg. Corp.,
18 605 F. Supp. 2d 1049, 1057-58 (C.D. Cal. 2008). Exhibit
19 12 is a court filing, which is subject to judicial
20 notice. Accordingly, the Court grants judicial notice of
21 these documents.

22 23 **II. LEGAL STANDARD**

24 **A. Requirements of Local Rule 55-1**

25 Local Rule 55-1 provides that an application for
26 default judgment must be accompanied by a declaration in
27 compliance with Federal Rule of Civil Procedure 55(b)

1 setting forth: (1) when and against what party the
2 default was entered; (2) the identification of the
3 pleading to which default was entered; (3) whether the
4 defaulting party is an infant or incompetent person, and
5 if so, whether that person is represented by a general
6 guardian, committee, conservator, or other
7 representative; (4) that the Servicemembers Civil Relief
8 Act does not apply; and (5) that notice has been served
9 on the defaulting party if required by Federal Rule of
10 Civil Procedure 55(b)(2).

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12 Fannie Mae has satisfied the requirements of Local
13 Rule 55-1. (See Declaration of Brian P. Stewart
14 ("Stewart Decl.") at ¶¶ 2-8 (Doc. No. 13-1).)

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16 **B. Default Judgment**

17 Federal Rule of Civil Procedure 55 authorizes the
18 Court to enter a default judgment against a party that
19 "fail[s] to plead or otherwise defend" a claim. Fed. R.
20 Civ. P. 55 (a)-(b)(2). "Even if entry of default has
21 been made by the court clerk, granting a default judgment
22 is not automatic; rather it is left to the sound
23 discretion of the court." PepsiCo v. Triunfo-Mex, Inc.,
24 189 F.R.D. 431, 432 (C.D. Cal. 1999) (citing Aldabe v.
25 Aldabe, 616 F.2d 1089, 1092 (9th Cir. 1980)); Laborers
26 Health and Welfare Trust Fund for N. Cal. v. Demas
27 Constr., Inc., 1997 WL 227976, at *1 (N.D. Cal. Mar. 14,

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1 1997) (citing Draper v. Coombs, 792 F.2d 915, 924 (9th
2 Cir. 1986)); see Ioane v. Alter, 1997 WL 767526, at *3
3 (N.D. Cal. Nov. 21, 1997) (citing Alan Neuman Prods.,
4 Inc. v. Albright, 862 F.2d 1388, 1392 (9th Cir. 1988)).
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6 In exercising its discretion to grant or deny an
7 application for default judgment, the Court considers the
8 following factors: (1) the possibility of prejudice to
9 the plaintiff, (2) the merits of plaintiff's substantive
10 claim, (3) the sufficiency of the complaint, (4) the sum
11 of money at stake in the action; (5) the possibility of a
12 dispute concerning material facts; (6) whether the
13 default was due to excusable neglect; and (7) the strong
14 policy underlying the Federal Rules of Civil Procedure
15 favoring decisions on the merits (collectively, "Eitel
16 factors"). Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th
17 Cir. 1986). The merits of the plaintiff's substantive
18 claim and the sufficiency of the complaint are often
19 treated by courts as the most important Eitel factors.
20 Mnatsakanyan v. Goldsmith & Hull APC, 2013 WL 10155707,
21 at *10 (C.D. Cal. May 14, 2013).
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23 III. DISCUSSION

24 A. Default Judgment

25 The general rule is that, upon default, the factual
26 allegations of the complaint, except those relating to
27 the amount of damages, will be taken as true. Televideo
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1 Sys. Inc. v. Heidenthal, 826 F.2d 915, 917-18 (1987); see
2 also DirectTV, Inc. v. Hoa Huynh, 503 F.3d 847, 854 (9th
3 Cir. 2007); Fed. R. Civ. P. 8(b)(6). Pursuant to Rule
4 8(b)(6), the Court accepts as true the allegations in the
5 unanswered Complaint.

6

7 In applying the Eitel factors, the Court finds Fannie
8 Mae entitled to entry of default judgment.

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10 **1. Possibility of Prejudice to the Plaintiff**

11 This "Eitel factor considers whether the plaintiff
12 will suffer prejudice if default judgment is not
13 entered." PepsiCo, Inc. v. California Sec. Cans, 238 F.
14 Supp. 2d 1172, 1177 (C.D. Cal. 2002). Here, Fannie Mae
15 would be prejudiced if default judgment is not entered
16 because it could not litigate on the merits since George
17 did not respond. Without default, Fannie Mae would
18 likely be without other recourse for recovery and the
19 Grant Deed, Revocation of Power of Attorney, and
20 Revocation of Deed would remain in the chain of title to
21 the Bonita Property. George could continue to transfer
22 improperly and further encumber the Bonita Property.
23 Thus, this factor favors entry of default judgment.

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1 **2. The Merits of Substantive Claims and Sufficiency**
2 **of the Complaint**

3 In evaluating a motion for default judgment, a court
4 deems the complaint's factual allegations, other than
5 those relating to the amount of damages, to be true.
6 MoroccanOil, Inc. v. Allstate Beauty
7 Prods., Inc., 847 F.Supp.2d 1197, 1200 (C.D. Cal. 2012)
8 (citing see Derek Andrew, Inc. v. Poof Apparel Corp., 528
9 F.3d 696, 702 (9th Cir. 2008)). The district court is
10 not required to make detailed findings of fact. Fair
11 Hous. of Marin v. Combs, 285 F.3d 899, 906 (9th Cir.
12 2002).

13
14 **a. Cancellation of the Recorded Documents**

15 California Civil Code § 3412 authorizes the
16 cancellation of written instruments if "there is a
17 reasonable apprehension that if left outstanding . . .
18 serious injury [may occur] to a person against whom it is
19 void or voidable." The plaintiff must show "facts
20 constituting the invalidity of the instrument if the
21 instrument is for any other reason void or voidable, then
22 the facts showing it to be such, whatever be their
23 nature, should be shown, and in such case, if the facts
24 be well pleaded, a case is stated." Hironymous v. Hiatt,
25 52 Cal. App. 727, 731 (1921).

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(i) Grant Deed

In California, a "grant [deed] takes effect, so as to vest the interest intended to be transferred, only upon its delivery by the grantor." Cal. Civ. Code § 1054; see Bank of Healdsburg v. Bailhache, 65 Cal. 327, 328-32 (1884). In other words, a deed is void if it is not legally delivered to the grantee. (Id.) Moreover, "delivery" refers to the grantor's intent to transfer title of the property described in the grant. Luna v. Brownell, 185 Cal. App. 4th 668, 673 (2010) (citing Osborn v. Osborn, 42 Cal. 2d 358, 363 (1954)).

Here, Boucher and George recorded the Grant Deed attempting to transfer the Bonita Property from GMAC to George without Fannie Mae's knowledge or authorization. (Compl. ¶ 15.) Therefore, Fannie Mae did not intend to transfer the Bonita Property to George. As a result, the Grant Deed could not be legally delivered and is void.

"[A]n instrument wholly void, such as an undelivered deed . . . cannot be made the foundation of a good title, even under the equitable doctrine of *bona fide* purchase." Trout v. Taylor, 220 Cal. 652, 656 (1934). As discussed above, the Grant Deed recorded by Boucher and George is void. Thus, there is substantive merit to Fannie Mae's claim for cancellation of the Grant Deed purporting to transfer title from GMAC back to George.

1 (ii) Revocation of Power of Attorney

2 George's attempt to remove the Bonita Property
3 trustee by recording the Revocation of Power of Attorney
4 is void. Paragraph 24 of the GMAC DOT articulates the
5 only mechanism by which a trustee can be changed, and it
6 does not include a unilateral removal by the borrower.²
7 (Mot. at 7.) George, as the borrower, cannot remove the
8 trustee to the Bonita Property. Thus, there is
9 substantive merit to Fannie Mae's claim for cancellation
10 of the Revocation of Power of Attorney.

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14 ² Paragraph 24 of the GMAC DOT states as follows:
15 "**Substitute Trustee.** Lender, at its option, may from time
16 to time appoint a successor trustee to any Trustee
17 appointed hereunder by an instrument executed and
18 acknowledged by Lender and recorded in the office of the
19 Recorder of the county in which the Property is located.
20 The instrument shall contain the name of the original
21 Lender, Trustee and Borrower, the book and page where
22 this Security instrument is recorded and the name and
23 address of the successor trustee. Without conveyance of
24 the Property, the successor trustee shall succeed to all
25 the title, powers and duties conferred upon the Trustee
26 herein and by Applicable Law. This procedure for
27 substitution shall govern to the exclusion of all other
28 provisions for substitution."

1 (iii) Revocation of Deed

2 George attempted to revoke the GMAC DOT from the
3 Bonita Property chain of title by recording the
4 Revocation of Deed. Similar to changing a trustee,
5 however, Paragraph 23 of the GMAC DOT articulates the
6 only mechanism by which the deed of trust can be
7 reconveyed.³ (Mot. at 8.) According to this provision
8 the GMAC DOT can only be reconveyed by the lender.
9 George, as the borrower, cannot reconvey the GMAC DOT.
10 Thus, there is substantive merit to Fannie Mae's claim
11 for cancellation of the Revocation of Deed.

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15 ³ Paragraph 23 of the GMAC DOT states as follows:
16 "**Reconveyance.** Upon payment of all sums secured by this
17 Security Instrument, Lender shall request Trustee to
18 reconvey the Property and shall surrender this Security
19 Instrument and all notes evidencing debt secured by this
20 Security Instrument to Trustee. Trustee shall reconvey
21 the Property without warranty to the person or persons
22 legally entitled to it. Lender may charge such person or
23 persons a reasonable fee for reconveying the Property,
24 but only if the fee is paid to a third party (such as the
25 Trustee) for services rendered and the charging of the
26 fee is permitted under Applicable Law If the fee charged
27 does not exceed the fee set by Applicable Law, the fee is
28 conclusively presumed to be reasonable."

1 **b. Quiet Title**

2 An action for quiet title is brought "to establish
3 title against adverse claims to real or personal property
4 or any interest therein." Cal. Civ. Proc. Code §
5 760.020(a). Courts must follow specific procedural
6 requirements to adjudicate a quiet title cause of action.
7 (Id.) To state a claim, "the complaint shall be
8 verified" and must include all of the following: (1) a
9 legal description of the property and its street address
10 or common designation; (2) the title of the plaintiff and
11 the basis of the title; (3) the adverse claims to the
12 title of the plaintiff; (4) the date as of which the
13 determination is sought; and (5) a prayer for the
14 determination of the title of the plaintiff against the
15 adverse claims. (Id. § 761.020.)

16
17 California prohibits the entry of default judgment in
18 a quiet title action unless the Court conducts a thorough
19 review of the evidence. See Harbour Vista, LLC v. HSBC
20 Mortg. Servs. Inc., 201 Cal. App. 4th 1496 (2011).
21 California courts conclude that "a quiet title judgment
22 requires a hearing in open court. Although section
23 764.010 does not mandate oral argument – and we do not
24 hold oral argument is necessary, though it may be helpful
25 – the statute requires examining plaintiff's title and
26 hearing defendant's evidence 'in all cases.'" Harbour
27 Vista, LLC, 201 Cal. App. 4th at 1507 (2011).

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1 Further, it is well established that "[u]nder the
2 Erie doctrine [Erie R. Co. v. Tompkins, 304 U.S. 64
3 (1938)], federal courts sitting in diversity apply state
4 substantive law and federal procedural law." In re
5 Larry's Apartment, L.L.C., 249 F.3d 832, 837 (9th Cir.
6 2001) (citing Gasperini v. Ctr. for Humanities, Inc., 518
7 U.S. 415, 427 (1996)). The Erie doctrine does not extend
8 to matters of jurisdiction, or generally, to matters of
9 procedure.⁴ Begay v. Kerr-McGee Corp., 682 F.2d 1311,
10 1316 (9th Cir. 1982). Harbour Vista's open court
11 evidentiary hearing requirement, in quiet title claims,
12 is procedural. Hence, the Court finds Fannie Mae's
13 Complaint sufficient to make a claim for quiet title
14 under section 761.020, without an evidentiary hearing,
15 based on the judicially-noticed evidence supporting the
16 claim.

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18 The first element of a quiet title claim is satisfied
19 because the Complaint provides the legal description and
20 address of the Bonita Property. (Compl. ¶ 8.)

21 _____
22 ⁴ Most evidentiary rules are procedural in nature,
23 and the Federal Rules of Evidence ordinarily govern in
24 diversity cases. Wray v. Gregory, 61 F.3d 1414, 1417
25 (9th Cir. 1995). Only state evidence rules that are
26 "intimately bound up with the state's substantive
27 decision making" must be given full effect by federal
28 courts sitting in diversity. Id.

1 The Complaint identifies Fannie Mae's title and the
2 basis of the title. "A properly conducted non-judicial
3 foreclosure sale constitutes a final adjudication of the
4 rights of the borrower and lender." Moeller v. Lien, 25
5 Cal. App. 4th 822, 831 (1994). Fannie Mae obtained title
6 to the Bonita Property through a non-judicial foreclosure
7 sale conducted on August 8, 2011, and a Trustee's Deed
8 Upon Sale recorded August 10, 2011. (Compl. ¶ 9.) Thus,
9 Plaintiff has satisfied the second element.

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11 The third element is satisfied because George's Grant
12 Deed claim (Compl. ¶ 14; Exh. E) is adverse to Fannie
13 Mae's Trustee's Deed Upon Sale claim to the Bonita
14 Property title. (Compl. ¶ 10; Exh. B.)

15
16 The fourth element (date of determination) and fifth
17 element (prayer for determination) are satisfied by
18 Fannie Mae's request that the Court quiet title in its
19 favor as of the date Fannie Mae recorded its Trustee's
20 Deed Upon Sale. (Compl. ¶ 22.)

1 The Court finds that Fannie Mae has a valid claim to
2 the Bonita Property title free and clear of George's
3 recorded interests because "recording laws mandate that
4 the first recorded deed of trust on real property is
5 superior to subsequently recorded deeds." In re Sunset
6 Bay Assocs., 944 F.2d 1503, 1508 (9th Cir. 1991) (citing
7 Cal. Civ. Proc. Code § 1214). Fannie Mae properly
8 recorded the Trustee's Deed of Upon Sale on August 10,
9 2011, before Boucher and George recorded the void Grant
10 Deed on August 30, 2011. George had proper record notice
11 of Fannie Mae's title, and therefore is without right to
12 any title to the Bonita Property. See In re Marriage of
13 Cloney, 91 Cal. App. 4th 429, 442 (2001) ("[I]t is an
14 equally well-established principle of law that any
15 purchaser of real property acquires the property subject
16 to prior interests of which he or she has actual or
17 constructive notice.").

18

19 Since Fannie Mae has good and legal title to the
20 Bonita Property, there is substantive merit to Fannie
21 Mae's claim for quiet title to the Bonita Property.

22

23 **3. The Sum of Money at Stake**

24 This factor "takes into account the amount of money
25 at stake and the seriousness of the defendant's conduct,
26 which involves an assessment of whether the recovery
27 sought is proportional to the harm which the defendant's

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1 conduct has caused." Trs. of Teamsters Local 631 Sec.
2 Fund for S. Nevada v. Knox Installation-Dismantling &
3 Servs., Inc., 2013 WL 4857897, at *2 (D. Nev. Sept. 9,
4 2013).

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6 Here, Fannie Mae is not seeking damages; rather, it
7 is seeking to clear title to the Bonita Property, cancel
8 the instruments filed by Boucher and George, and enjoin
9 George from further unauthorized use of Fannie Mae's
10 name. Since Fannie Mae is not seeking damages, and
11 because the relief requested is proportional to the harm
12 George caused, this factor favors entry of default
13 judgment in support of the Motion.

14
15 **4. Possibility of a Dispute Concerning Material**
16 **Facts and Whether the Default Was Due to**
17 **Excusable Neglect**

18 Fannie Mae filed a Complaint that alleged the
19 requisite elements for each claim and George did not file
20 a response. Fannie Mae also provided supporting
21 declarations and recorded documents that confirm Boucher
22 and George acted without authorization and that Fannie
23 Mae is the owner of the Bonita Property. Therefore, no
24 genuine dispute of material facts exist. Elektra Entm't
25 Grp. Inc. v. Crawford, 226 F.R.D. 388, 393 (C.D. Cal.
26 2005) ("Because all allegations in a well-pleaded
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1 complaint are taken as true after the court clerk enters
2 default judgment, there is no likelihood that any genuine
3 issue of material fact exists.").

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5 Fannie Mae made sufficient efforts to notify George
6 of the Complaint and intent to seek default judgment by
7 serving George properly. (Doc. No. 7.) Nonetheless,
8 George has not responded nor attempted to defend this
9 action. It is unlikely that default would be the result
10 of excusable neglect.

11

12 Accordingly, these factors favor entry of default
13 judgment.

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15 **5. The Strong Public Policy Favoring Decisions on**
16 **the Merits**

17 Though "[c]ases should be decided upon their merits
18 whenever reasonably possible," a defendant's failure to
19 answer the plaintiff's complaint "makes a decision on the
20 merits impractical, if not impossible." Elektra, 226
21 F.R.D. at 393. The Federal Rules of Civil Procedure
22 allow for termination of a case before a hearing on the
23 merits where the defendant fails to defend an action.
24 Here, George has failed to defend this action. Thus,
25 this factor favors entry of default judgment.

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1 Accordingly, as all the Eitel factors favor entry of
2 default judgment, the Court enters default judgment.

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4 **B. Permanent Injunction**

5 **1. Legal Standard**

6 "A plaintiff seeking a preliminary injunction must
7 establish that he is likely to succeed on the merits,
8 that he is likely to suffer irreparable harm in the
9 absence of preliminary relief, that the balance of
10 equities tips in his favor, and that an injunction is in
11 the public interest." Winter v. Natural Res. Def.
12 Council, Inc., 555 U.S. 7, 20 (2008) ("Winter test"); see
13 Amoco Prod. Co. v. Vill. of Gambell, AK, 480 U.S. 531,
14 545 (1987) ("The standard for a preliminary injunction is
15 essentially the same as for a permanent injunction with
16 the exception that the plaintiff must show a likelihood
17 of success on the merits rather than actual success.").

18
19 Irreparable harm will be presumed where defendants
20 engaged in acts prohibited by a statute that provides for
21 injunctive relief. See Silver Sage Partners, Ltd. v.
22 City of Desert Hot Springs, 251 F.3d 814, 827 (9th Cir.
23 2001).

24
25 12 U.S.C. § 1723a(e) (2012) prohibits any individual
26 from the use of the words "'Federal National Mortgage
27 Association,' 'Governmental National Mortgage
28

1 Association,' or any other combination of such words."
2 Violations of § 1723a(e) "may be enjoined by any court of
3 general jurisdiction." (Id.)

4

5 **2. Discussion**

6 The first element of the Winter test is met because
7 Fannie Mae succeeds on the merits of its claims to cancel
8 Boucher and George's recorded documents, and gain quiet
9 title to the Bonita Property.

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11 The second element is met because George may attempt
12 to convey or otherwise encumber the Bonita Property in
13 the future, and because George used the name Federal
14 National Mortgage Association and Government National
15 Mortgage Association in violation of 12 U.S.C. §
16 1723a(e). (Compl. ¶ 15.) Therefore, under Silver, there
17 is a presumption of irreparable harm to Fannie Mae.

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19 The third element is met because a monetary judgment
20 will not prevent George from further clouding title to
21 the Bonita Property, making an injunction necessary to
22 grant relief. Furthermore, George's Grant Deed is void
23 and without legal title to Bonita Property. Thus, the
24 balance of equities clearly favor Fannie Mae.

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1 The fourth element is met because it is in the public
2 interest that real property in the community is free and
3 clear of void and improper encumbrances.

4
5 As all the elements of the Winter test are met, the
6 Court GRANTS the request for a permanent injunction.

7
8 **IV. CONCLUSION**

9 For the reasons set forth above, the Court (1) GRANTS
10 Fannie Mae's request for cancellation of the recorded
11 documents; (2) QUIETS TITLE to the Bonita Property; and,
12 (3) ENJOINS George from recording any further documents
13 against the title of the Bonita Property and from any
14 further unauthorized use of Fannie Mae's name. Thus, the
15 Motion for Default Judgment is GRANTED, and Judgment is
16 entered in favor of Plaintiff Fannie Mae and against
17 Defendant Divina Albasete George as follows:

18 (1) The Court declares that Fannie Mae is the true
19 and lawful owner of the real property commonly known as
20 1918 S. Bonita Ave., Ontario, CA 91762 (the "Bonita
21 Property") and legally described as:

22 Lot 50, Tract 11306, as per plat Recorded in Book
23 153, Page(S) 55 to 61 Inclusive of Maps, in the
24 Office of the County Recorder of said County.
25 Assessor's Parcel No. 1050-352-19;

26 (2) The Court declares that the Revocation of Power
27 of Attorney recorded on June 15, 2010 as Instrument No.

1 2010-0236728 in the Official Records of San Bernardino
2 County, California is VOID, *ab initio*, and does not alter
3 title as established by the Trustees Deed Upon Sale
4 recorded as Instrument No. 2011-0336912 in the Official
5 Records of San Bernardino County;

6 (3) The Court declares that the Revocation of Deed
7 recorded on June 15, 2010 as Instrument No. 2010-0236729
8 in the Official Records of San Bernardino County,
9 California is VOID, *ab initio*, and does not alter title
10 as established by the Trustees Deed Upon Sale recorded as
11 Instrument No. 2011-0336912 in the Official Records of
12 San Bernardino County;

13 (4) The Court declares that the Grant Deed recorded
14 on August 30, 2011 as Instrument No. 2011-0365288 in the
15 Official Records of San Bernardino County, California is
16 VOID, *ab initio*, and does not alter title as established
17 by the Trustees Deed Upon Sale recorded as Instrument No.
18 2011-0336912 in the Official Records of San Bernardino
19 County;

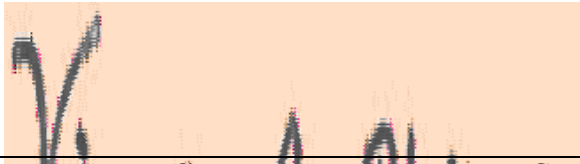
20 (5) The Court declares that Fannie Mae shall have
21 judgment in its favor for its claim of quiet title to the
22 subject property located at 1918 S. Bonita Ave., Ontario,
23 CA 91762, as against Divina Albasete George;

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1 (6) The Court declares that Divina Albasete George is
2 enjoined from recording any further documents against the
3 title to the Bonita Property and from any further
4 unauthorized use of Fannie Mae's name.
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Dated: July 7, 2015



VIRGINIA A. PHILLIPS
United States District Judge